



# General Assembly

Distr.: General  
19 May 2011

English/French/Spanish only

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**Human Rights Council**

**Seventeenth session**

Agenda item 3

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

**Report of the Special Rapporteur on independence of judges  
and lawyers, Gabriela Knaul**

**Addendum**

**Summary of information, including individual cases, transmitted to  
Governments and replies received\***

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\* The present report is circulated as received.

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## 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 (A/HRC/17/30). It reflects specific situations alleged to be affecting the independence of judges or lawyers or violating the right to a fair trial in 44 countries and 1 another actor. Further, it includes replies received from the Government of the country concerned in response to specific allegations together with the Special Rapporteur's comments and observations.

2. The report presents summaries of the urgent appeals and allegation letters transmitted by the Special Rapporteur to governmental authorities between 16 March 2010 and 15 March 2011, and of the press releases issued during the same reporting period. During this period, the Special Rapporteur sent a total of 97 communications and issued 6 press statements on situations of particular concern or to highlight a specific event.<sup>1</sup> In this connection, the Special Rapporteur wishes to emphasize that the communications presented in the report exclusively reflect allegations she received and subsequently acted upon. Allegations containing insufficient information, and falling outside the scope of the mandate, or on which due to time or other constraints the Special Rapporteur was not in a position to act, are not included in the report.

3. A summary of the replies received from States concerned during the period between 1 May 2010 and 10 May 2011 is also provided. In certain instances, the Government's response was obtained late and referred to allegations that were presented in the previous report (A/HRC/14/26/Add.1). In those cases, the Special Rapporteur has included the respective replies in the section of communications received including a summary of the communication sent, in order to facilitate the reader's comprehension. Furthermore, translations of replies which had not been received within the required delay to be included in last year's report are also summarized in the present report.

4. It may be noted that certain responses to urgent appeals or allegation letters sent during the reporting period, and for which the Special Rapporteur wishes to thank the Governments, could not be included in the report owing to the fact that they were either not translated in time or received after 10 May 2011. To the Special Rapporteur's regret, they will therefore be reflected only in next year's report. As per established practice of the Special Procedures of the Human Rights Council, the Special Rapporteur has summarized the details of the correspondence sent and received.

## II. Statistical data

5. The following charts of statistical data are aimed at providing the Human Rights Council with an overview of developments which occurred in 2010 and the first trimester of 2011.

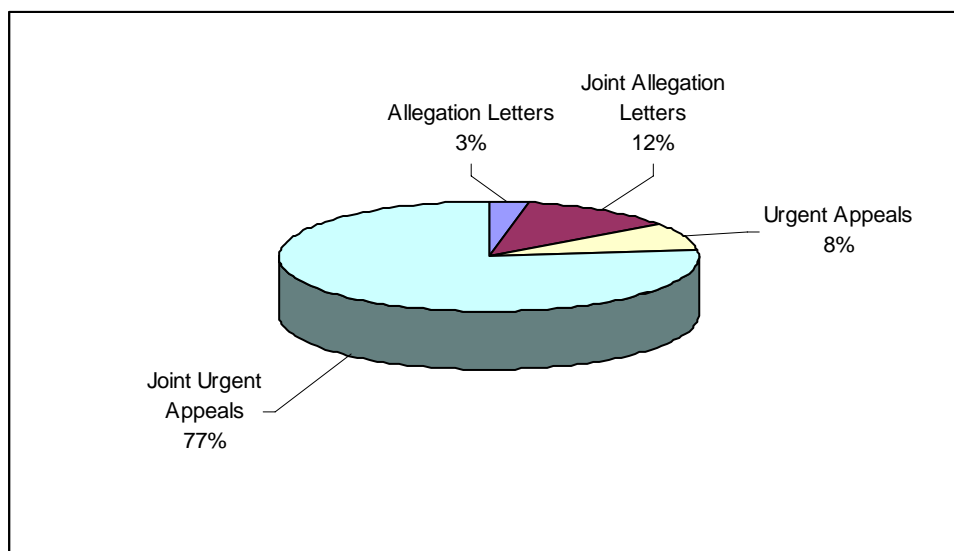
6. As illustrated by the charts, action has to be taken in all parts of the world and covered a very wide range of issues. Since it is far from uncommon that situations affecting the judiciary occur in contexts in which other democratic institutions are also at risk, or where a variety of human rights are being violated – for example the right to life, the right not to be subjected to torture and ill-treatment, the right to freedom of expression, women's rights, children's rights indigenous people's and minorities' rights - the Special Rapporteur's action often had to be taken jointly with other special procedures. Thus,

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<sup>1</sup> This excludes press releases issued prior to country missions and end-of-mission statements.

approximately 89 % of communications were sent to Governments jointly with other special procedures (**see chart 1**). This also reflects the Special Rapporteur's will to work in close collaboration with other mandate holders so as to strengthen the impact of the special procedures system.

**Chart 1: Types of Communications**



7. As noted earlier, the Special Rapporteur sent a total of 97 communications during the reporting period, of which 8 urgent appeals, 75 joint urgent appeals, 3 allegations letters and 11 joint allegations letters.

8. The Special Rapporteur appreciates the responses received from 18 Governments to communications sent over the period under review, namely from the Governments of Argentina, Bahrain, Bangladesh, Belarus, Bolivia, the People's Republic of China, Guatemala, India, Islamic Republic of Iran, Kazakhstan, the Kyrgyz Republic, Mauritania, Morocco, the Russian Federation, the Syrian Arab Republic, Tajikistan, Venezuela and the Republic of Yemen. She notes that the response rate of replies received from Governments for the reporting period 2010-2011 remains constant in comparison with the previous reporting period 2009-2010. Of the 97 communications which were sent to 44 States and 1 other actor referred to in this report, she received 41 replies representing about 42 % response rate. However, this figure does not include 10 additional replies which referred to allegations that were presented in the previous report. During the reporting period 2009-2010, 106 communications were sent and 45 replies received, representing the same response rate, 42% (**see chart 2**).

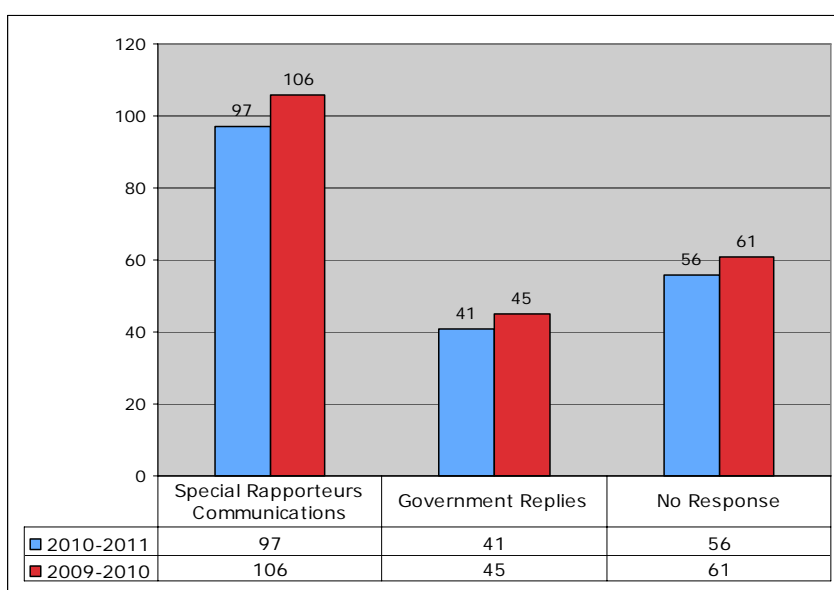
9. The Special Rapporteur underlines that it is crucial that governments share their views on the allegations received with her. She welcomes and encourages further cooperation from governments in response to communications sent by her mandate. Early, precise and detailed answers allow for a dialogue which, in many cases, leads to a clarification of the matters and often even to a settlement of the case.

10. With regard to communications sent during the reporting period covered in the previous report, and for which no replies had been received within the required delay, the Special Rapporteur welcomes the replies transmitted in 2010 in response to 10 of those previous communications by a number of Governments, namely by the Governments of the People's Republic of China, India, the Islamic Republic of Iran, the Syrian Arab Republic and Venezuela.

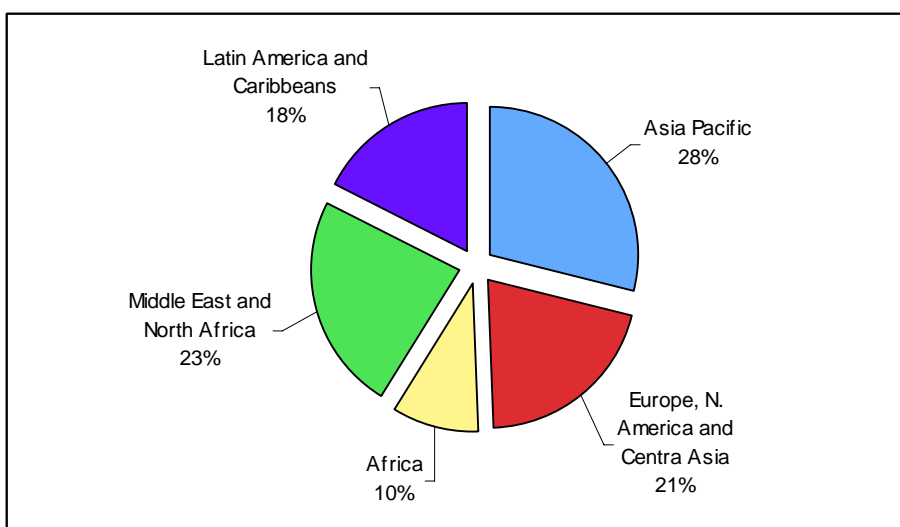
11. The Special Rapporteur highlights her preoccupation with the proportion of specific allegations of serious human rights violations that remain unanswered, particularly where the cases at hand concerned serious and revealed systemic violations affecting not only the judiciary, but the institutional structures of the Member State at large. In addition, the Special Rapporteur notes that replies are often received with a considerable delay and encourages Member States to reply to her communications within reasonable deadlines, in particular when they concern time sensitive issues, which may have irreversible consequences for the subjects of the appeals.

12. The figures provided below do not include the replies by Governments for which a translation was not available for last year's report, as they were reflected in data published in the previous report A/HRC/14/26/Add.1.

**Chart 2: Comparison of communications sent and replies received in 2009-2010 and 2010-2011**

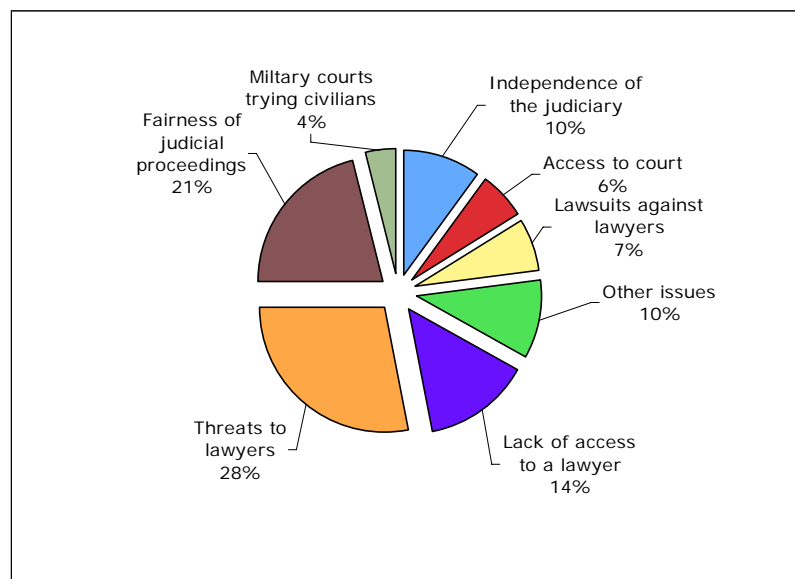


**Chart 3 Communications per Region**



13. The Special Rapporteur notes that communications have been sent to Member States of all regions of the world (see chart 3). The Asia and Pacific region (29%) and the Middle East and North Africa region (23,5%), the Latin America and the Caribbean region (17,5%). The Africa region has received 9,5% of the communications. Finally, the Europe, North America and Central Asia region accounts for 20,5% of the communications sent during the reporting period.

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



14. The Special Rapporteur's communications addressed to the Governments on alleged human rights violations covered a wide range of issues (see chart 4). The main areas of concern were threats to lawyers, including acts of interference in the discharge of their professional functions (28%). Issues relating to the fairness of judicial proceedings which include the right to be informed of the charges and undue delays in judicial proceedings, amount to 21% of the cases. In about 14% of the communications, a lack of access to a lawyer is alleged, often observed in places of detention. There were concerns on the independence of the judiciary in about 10% of the cases, in particular interference in the judicial functions and threats to lawyers and prosecutors. Lawsuits against lawyers relating to civil, criminal and disciplinary charges constitute 7% of the cases. 6% concern allegations relating to the lack of access to courts. Cases which raise issues regarding impunity amount to 5% of the communications. 4% of the cases relate to military courts trying civilians, and the same percentage concerns restriction on the freedom of expression of lawyers. Finally, 10% cover other issues, such as freedom of expression of lawyers, impunity, access to a lawyer in private, tenure, removal and appointment of judges, and disbarment of lawyers.

15. The Special Rapporteur has included in the present report a table of communications sent and replies received from governments to provide the Human Rights Council with an overview of developments in 2010 and the first trimester of 2011.

16. The table indicates the type of communication, the subject of the communication and provides a summary of the types of violations alleged. The Special Rapporteur has classified the communications thematically depending on the nature of the alleged violations raised. Furthermore, the table indicates the status of the replies and the date the response provided by the Government has been received.

	Country	Type of comm*	Date	Subject(s) concerned	Summary of alleged violations	Status of response	Paragraphs
1.	Argentina 1 JUA	JUA	27.04.10	Ms. María Isabel Caccioppolis	Threats to and intimidation of the lawyer and human rights defender María Isabel Caccioppolis	Yes 03.08.10	17–30
2.	Bahrain 1 JUA	JUA	15.10.10	Mr. Ali Abdulemam	Arrest and detention of Mr. Ali Abdulemam, news website manager; lack of access to legal representation; access to court	Yes 15.10.10	31–54
3.	Bangladesh 2 JUAs	JUA	17.02.11	Ms. Moshrefa Mishu	Detention and trial of Ms. Moshrefa Mishu; Interference with the judicial process	Yes 09.03.11	55–76
		JUA	21.02.11	Mr. Salauddin Quader Chowdhury	Lack of investigation into allegations of ill-treatment while in detention and lack of access to legal representation	Yes 09.03.11	
4.	Belarus 1 JUA 1 UA	JUA	28.01.11	Belarusian Helsinki Committee Ms. Tamara Sidarenka; Mr. Paval Sapelko and Mr. Mikhail Volchak	Interference in the discharge of professional functions of lawyers	Yes 01.02.11	77–101
		UA	10.03.11	Lawyers, including Mr. Uladzimir Toustsik, Ms. Tamara Harayeva, Mr. Aleh Aheyeu, Ms. Tatsiana Aheyeva and Mr. Pavel Sapelka	Pattern of intimidation and interference in the discharge of the professional functions of lawyers, including the lawyers named Mr. Uladzimir Toustsik, Ms. Tamara Harayeva, Mr. Aleh Aheyeu, Ms. Tatsiana Aheyeva and Mr. Pavel Sapelka	Yes 14.03.11	
5.	Bolivia 2 UAs 1 JUA	UA	27.05.10	22 Magistrates	Independence of the Judiciary Tenure and removal of judges; dismissal of 22 magistrates despite the ruling of the Constitutional Court in their favour	Yes 12.08.10	102–166
		JUA	07.06.10	Mssrs. Juan Urabo Pereira Olmos y Alex Peter Pardo Paniagua	Independence of the Judiciary: Criminal lawsuit against judges in their judicial and professional capacity	Yes 12.08.2010	

\* Type of Communication: UA: Urgent Appeal; JUA: Joint Urgent Appeal; AL: Letter of Allegation; JAL: Joint Letter of Allegation.



<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
	UA	29.06.10	Mr. Luis Fernando Tapia Pachi	Independence of the Judiciary: Criminal lawsuit against the judge Luis Fernando Tapia Pachi in his judicial and professional capacity	Yes 12.08.2010	
6. Cambodia 1 JUA	JUA	14.09.10	Mr. Leang Sokchouen, Mr. Tach Vannak, Mr. Tach Le and Mr. Tach Khong Phoung	Fairness of judicial proceedings	No	167–179
7. China (People's Republic of) 3 JUAs 1 JAL	JUA	27.04.10	Mr. Tang Jitian and Mr. Lui Wei	Revocation of lawyer's license; interference in the discharge of professional functions of lawyers	Yes 05.07.10	180–254
	JAL	26.08.10	Mr. Guo Xiaojun and Mr. Liang Xiaojun	Arrest and detention of Mr. Guo Xiaojun: fairness of judicial proceedings: conviction based on confession obtained through threats and ill-treatment; intimidation of and threats against Mr. Liang Xiaojun, defence lawyer of Mr. Guo Xiaojun	No	
	JUA	09.11.10	Mr. Dhondup Wangchen (also known as Dunzhu Wangqing and Dangzhi Xiangqian)	Detention and ill-treatment following dissemination of a documentary film: fairness of judicial proceedings	Yes 21.12.10	

Country	Type of comm*	Date	Subject(s) concerned	Summary of alleged violations	Status of response	Paragraphs
	JUA	03.03.11	Group of individuals including: Mr. Qian Jin, Mr. Zhang Lin, Ms. Fang Cao, Mr. Gu Chuan, Ms. Li Xinai, Mr. Qi Zhiyong, Mr. Li Hai, Ms. Hao Xiuxia, Mr. Zheng Daijing, Ms. Jin Han, Mr. Chen Yunfei, Mr. Ran Yunfei, Mr. Huang Yanming, Liu Shihui, Mr. Tang Jingling, Mr. Ye Du, Ms. Liang Haiyi, Mr. Zheng Chuangtian, Mr. Ding Mao, Mr. Yao Lifa, Mr. Feng Zhenghu, Mr. Chen Wie, Mr. Deng Taiging, Mr. Yue Tianxiang, Mr. Hu Guohong, Ms. Chen Xue, Mr. Yang, Mr. Qin Yongmin, Mr. Jiang Hansheng, Mr. Chen Zhonghe, Mr. Xiao Shichang, Zhang Junjie, Mr. Ren Qiuguang, Mr. Hua Chunhui, Mr. Shi Yulin, Mr. Du Daobin, Mr. Jiang Tianyong, Mr. Tang Titian and Mr. Teng Biao	Pattern of arrests, detentions, enforced disappearances and intimidations of human rights defenders and lawyers following calls for protests made in at least eighteen cities across the country; interference in the discharge of the professional functions of the lawyers named Mr. Jiang Tianyong, Mr. Tang Titian and Mr. Teng Biao	No	
8. Colombia 4 JUAs	JUA	13.09.10	Judge Mr. Alexander Cortés	Independence of the Judiciary: Acts of intimidation and threats against a former military criminal judge in his judicial capacity, for filing a case of a pattern of summary executions; dismissal without disciplinary proceeding; Threats to his wife, a military public defender and dismissal	No	255–289
	JUA	27.10.10	Ms. Ángela María Buitrago	Acts of intimidation and threats against Ms. Ángela María Buitrago, prosecutor, and dismissal	No	
	JUA	02.10.10	Mr. Alexander Montaña y la Ms. Sofia Lopez	Threats and attack against lawyers in the discharge of their professional functions ; right to security	No	

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
	JUA	01.03.11	Mr. David Ravelo Crespo	Threats against lawyer	No	
9. Democratic Republic of the Congo 1 JUA	JUA	29.12.10	Mr. Robert Shemahamba and Mr. Dominique Kalonzo	Arrest and detention of Mr. Shemahamba Ill-treatment and abduction of Mr. Kalonzo Lack of prompt access to a lawyer	No	290–296
10. Egypt 2 JUAs	JUA	12.08.10	Mr. Mes'ed Al Shaf'i	Detention and ill-treatment of Mr. Al Shaf'i, member of the Muslim Brotherhood: No access to court and possibility to determine the legality of his detention	No	297–311
	JUA	04.02.11	Group of people: human rights defenders and lawyers, and journalists, including: Mr. Ahmed Seif El Islam, Mr. Mohsen Beshir, Mr. Mostafa Al Hassan, Ms. Mouna Al Masry, Mr. Al Sayed Feky, Mr. Mohamed El Taher, Ms. Fatma Abed, Ms. Shahdan Abou Shad, Ms. Nadine Abu Shadi, Ms. Nadia Hashem, Mr. Ahmed Hamdy Mahmoud, Mr. Said Haddadi, Mr. Daniel Williams, Ms. Sofia Amara, Mr. Pedro da Foneska, Mr. Amr Salah, Ms. Shadi Al Ghazali Harb, Mr. Nasser Abdel Hamid, Mr. Mohamed Arafat, Mr. Ahmed Douma, Mr. Amr Ezz, and Mr. Ahmed (surname unknown), Mr. Rajesh Bhardwaj	Pattern of arrests, arbitrary detentions, disappearances of human rights defenders, including lawyers, and journalists in Egypt, in relation to the demonstrations which have been taking place across the country; freedom to carry out legal work	No	
11. Equatorial Guinea 1 JAL	JAL	01.10.10	Messrs. José Abeso Nsue, Manuel Ndong Aseme, Alipio Ndong Asumu, Jacinto Micha Obiang, Marcelino Nguema Esono and Santiago Asumu	Military courts trying civilians, right to access justice; right to appeal, right to life	No	312–320

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
12. Guatemala 1 UA	UA	03.03.11	Legislation	Independence of the Judiciary: Absence of legislation regarding the procedures for the appointment and selection of constitutional judges	Yes 15.04.2011	321–345
13. Honduras 3 JUAs 1 JAL	JAL	24.03.10	Legislation	Right to access justice; impunity as a result of Amnesty Decree	No	346–375
	JUA	21.05.10	Messrs. Luis Alfonso Chavez de la Roca, Ramón Enrique Barrios, Guillermo López Lone, Osman Fajardo Morel and Ms. Tirza Flores Lanza.	Independence of Judiciary: Threats and charges against Judges and Public Defender, as consequence of the exercise of their right to freedom of expression and opinion; dismissal without disciplinary proceedings	No	
	JUA	19.11.10	Lawyers from the Asociación para una Sociedad más Justa (ASJ)	Threats against lawyers	No	
	JUA	16.02.11	Lawyers from the Asociación para una Sociedad más Justa (ASJ)	Threats against lawyers	No	
14. India 1 JUA	JUA	29.07.10	Mr. Mian Abdul Qayoom and Mr. Ghulam Nabi Shaheen	Arrest, detention of and lawsuits against Mr. Mian Abdul Qayoom, President of the Jammu and Kashmir High Court Bar Association, Srinagar, and Mr. Ghulam Nabi Shaheen, General Secretary of the Bar Association	Yes 06.12.10	376–397

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
15. Indonesia 1 JUA	JUA	19.07.10	Group of individuals, including Fredy Akihary, Leonard Hendriks, Semuel Hendriks, Piter Johanés, Aleks Malawauw, Buce Nahumury Ferdinand Arnold Rajawane, Johny Riry, Mercy Riry, Abraham Saiya, Ferjon Saiya, Johan Saiya, Jordan Saiya, Pieter Saiya, Ruben Saiya, Stevi Saiya, Marthen Saiya, Yefta Saiya, Yohanis Saiya, Johny Sinay, Melkianus Sinay, Yosias Sinay, Johan Teterissa, Flip Malawau, Barce Manuputty, Yutus Nanarian, Petrus Rahayaan Arens Arnol Saiya, Piter Elia Saiya, Elia Sinay and Alexander Tanate	Arrest and detention of 43 political activists as a consequence of the exercise of their right to freedom of opinion and expression: Lack of access to a lawyer; fairness of judicial proceedings; lack of investigations into allegations of torture	No	398–406
16. Iran (Islamic Republic of) 2 UAs 12 JUAa 1 AL	JUA	22.03.10	Mr. Heshmatollah Tabarzadi	Detention and ill-treatment of Mr. Heshmatollah Tabarzadi in the exercise of his right to freedom of expression; lack of access to a lawyer	No	407–612
	AL	27.04.10	Group of individuals; legislation	Recent establishment of a “special court” at Evin prison; no access to lawyers and no adequate time and facilities for the preparation of the defence	No	
	JUA	29.07.10	Mr. Mohammad Mostafaei, his wife Ms. Fereshteh Halimi, and her brother, Mr. Farhad Halimi	Threats and enforced disappearance of Mr. Mohammad Mostafaei, a human rights lawyer, and arrest and threats against his family	No	

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i> Paragraphs
	UA	12.08.10	Ms. Sarah Emily Shourd and two other individuals	Arrest of Ms. Shourd together with two companions: Detention in solitary confinement of Ms. Shourd without any charges and with no access to lawyer	Yes 07.10.10
	JUA	23.09.10	Mr. Abdollah Momeni	Torture and detention in solitary confinement of Mr. Abdollah Momeni: confession obtained under torture and no access to lawyer of his choice	No
	JUA	29.09.10	Ms. Zeynab Jalalian	Sentence to death for the offence of “enmity against God” following a trial during which two lawyers were prevented from taking up her defence	No Response received to previous communication dated 23.04.10: 18.03.11
	JUA	30.09.10	Mr. Mohammad Seifzadeh	Lawsuit against Mr. Seifzadeh, lawyer and human rights activist	No
	JUA	07.10.10	Mr. Isa Saharkhiz and Mr. Hossein Derakhshan	Detention and sentencing of Mr. Isa Saharkhiz and Mr. Hossein Derakhshan; fairness of judicial proceedings	Yes 07.10.10 16.02.11
	JUA	12.11.10	Mr. Mohammad Seifzadeh, Mr. Abdolfattah Soltani and Mr. Mohammad Ali Dadkhah	Lawsuit against. Mohammad Seifzadeh, a lawyer and co-founder of the Defenders of Human Rights Centre Conviction of Mr. Abdolfattah Soltani and Mr. Mohammad Ali Dadkhah, two other co-founders of DHRC; fairness of judicial proceedings	Yes 08.02.11

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i> Paragraphs
	UA	19.11.10	Group of individuals: Ms. Maryam Kiyani Ersi, Ms. Maryam Karbasi, Ms. Sara Sabaghian, Ms. Rosa Gharachurlo, Mr. Mohammad Hossein Nayyer, Mr. Mohammad Oliyaeifard, Mr. Abdolfattah Soltani, Mr. Mohammad Ali Dadkhah, Ms. Shirin Ebadi, Ms. Nasrin Sotoudeh, Mr. Mohammad Dadkhah, Mr. Hadi Esmailzadeh, Fatemeh Gheyra, Abdolfattah Soltani, Ms. Shadi Sadr and Mr. Mohammad Mostafaei	Patterns of interference in the professional discharge of functions for lawyers: (a) pattern of arresting defence lawyers; (b) pattern of intimidation and harassment; (c) Disbarment of lawyers; (d) Exile of defense lawyers	No
	JUA	19.11.10	Ms. Nasrin Sotoudeh and her husband	Detention of and lawsuit against Ms. Nasrin Sotoudeh, lawyer and prominent human rights activist, threats against Ms. Sotoudeh and her husband	No
	JUA	30.12.10	Mr. Habibollah Latifi	Imminent execution of Mr. Habibollah Latifi, law student at Azad University, sentenced to death following a trial held behind closed doors in the absence of lawyer and family	Yes 15.02.11
	JUA	31.12.10	Mr. Saeed Malekpour	Detention, ill-treatment, including forced confession and imminent execution of Mr. Saeed Malekpour, sentenced to death following a trial during which he had no regular access to legal representation and no adequate time and facilities to prepare the defense Interference with the discharge of the professional functions of the judge in charge of the case	No

Country	Type of comm*	Date	Subject(s) concerned	Summary of alleged violations	Status of response	Paragraphs
	JUA	11.01.11	Group of individuals: Mr. Ali Saremi, his wife Ms. Mihan Saremi, and their daughter, Pouya Saremi, Mr. Mohammad Ali Saremi, Mohammad Reza Saremi, Mr. Jaafar Kazemi, Mr. Javad Lari, Mr. Mohammad Ali Haj-Aghaei, Mr. Jaafar Kazemi, Mr. Mohammad Ali-Haj-Aghaei, Mr. Javad Lari, Ms. Farah (also known as Elmira) Vazehan, Mr. Abdolreza Ghanbari, father and son Mr. Ahmad Daneshpour Moqhaddam and Mohsen Daneshpour Moqhaddam, Ms. Zahra Bahrami, Ms. Hakimeh Shokri, Ms. Neda Mostaghimi, Mr. Mehdi Ramezani, Mr. Mohammad Nourizad, Ms. Fakhrosadat Mohtashamipour, Mr. Mostafa Tajzadeh, Mr. Ali Akbar Siadat, Mr. Hossein Khezri and Mr. Reza Sharifi Bukani	Pattern of executions, arrests and detentions; due process concerns: right to a fair and public hearing; lack of access to legal representation and preparation of the defence; forced confession	Yes 04.02.11	
	JUA	11.02.11	Ms. Fatemeh Salbehi and Mr. Ehsan Rangraz Tabaatabaa'ie	Imposition of the death penalty upon Ms. Fatemeh Salbehi and Mr. Ehsan Rangraz Tabaatabaa'ie, both juveniles at the time of the alleged commission of the offence	No	
17. Israel 2 JUAs 1 JAL	JUA	26.03.10	Group of children	Detention and interrogation of 13 Palestinian minors at Al Jalame Interrogation and Detention Centre, with denied access to a lawyer and family visits	No	613–642



<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
	JAL	21.06.10	Group of children	Violent arrest, denied access to a lawyer as well as the use, or threatened use, of sexual assault during interrogations by Israeli security and law enforcement personnel against nine Palestinian children in order to extract confessions	No	
	JUA	03.11.10	Mr. Ameer Makhoul	Conviction of Mr. Makhoul, General Director of Ittijah, a network of Arab NGOs and Chairperson of the Public Committee for the Defence of Political Freedom, evidence obtained by unlawful methods	No	
18. Kazakhstan 1 JUA	JUA	19.01.11	Group of individuals, including Mr. Akhmad Boltoiev, Mr. Saidakbar Zhalolkhonov, Mr. Kobiljon Kurbanov, Mr. Ulugbek Ostonov, Mr. Isobek Pardaiev, Mr. Oibek Pulatov, Mr. Uktam Rakhmatov, Mr. Sirojiddin Talipov, Mr. Otabek Sharipov, Mr. Akmoljon Shodiev, Mr. Olomjon Kholturaiev, Mr. Sarvar Khurramov, Mr. Bakhridin Nurillaiev, Mr. Ravshan Turaiev, Mr. Toirzhan Abdusamatov, Mr. Faizullakhon Akbarov, Mr. Sukhrob Bazarov, Mr. Shukhrat Botirov, Mr. Mukhitdin Gulamov, Mr. Dilbek Karimov, Mr. Abdor Kasymov, Mr. Oibek Kuldashev, Mr. Tursunboy Sulaimanov, Mr. Shukhrat Kholbaiev, Mr. Alisher Khoshimov, Mr. Ma'rufa Fahriddin O'g'li Yuldoshev, Mr. Abduazimkhodja Yakubov.	Detention and ill-treatment of a group of refugees and asylum-seekers: lack of access to a lawyer	Yes 14.03.11	643–652

	<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
19.	Kuwait 1 JUA	JUA	11.06.10	Mr. Mohammad Abdul Qadar Al-Jasim	Legality of extended detention of and charges against Mr. Mohammad Abdul Qadar Al-Jasim, journalist and lawyer, fairness of judicial proceedings	No	653–662
20.	Kyrgyz Republic 3 JUAs 3 JALs	JUA	20.07.10	Group of individuals	Large number of detentions and alleged torture and ill-treatment of ethnic Uzbeks in Osh and Djalal-Abad Provinces in the Kyrgyz Republic: Access to a lawyer in private, intimidation of lawyers	Yes 02.11.10	663–816
		JAL	12.08.10	Mr. Nurbek Toktakunov	Threats to lawyer for his legal assistance provided to Mr. Azimzhan Askarov	Yes 16.12.10	
		JUA	18.08.10	Mr. Azimzhan Askarov	Access to a lawyer in private; lack of investigations into allegations of torture of Azimzhan Askarov, director of human rights organization Vozdukh	Yes 21.08.10 06.10.10	
		JAL	15.09.10	Mr. Abdumannap Khalilov	Assault on Mr. Abdumannap Khalilov, human rights defender and lawyer from Osh	No	
		JUA	25.10.10	Human rights NGO Spravedlivost and group of individuals	Threats to members of human rights NGO Spravedlivost for providing legal and judicial assistance to both ethnic Kyrgyz and Uzbek people in the aftermath of the June 2010 violence	No	
		JAL	29.10.10	Group of individuals including Mr. Azimzhan Askarov, and Mr. Nurbek Toktakunov	Lack of procedural guarantees in the trial of Mr. Askarov, access to his lawyer in private Interference in the discharge of the professional duties of his lawyer Mr. Toktakunov and threats to lawyers	Yes 16.12.10	
21.	Maldives 1 UA	UA	30.07.10	Group of individuals; legislation	Criteria developed by the Judicial Services Commission for the re-appointment of sitting judges	No	817–822

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
22. Mauritania 1 JUA	JUA	29.12.10	Mr. Biram Ould Dah Ould Abeid, Mr. Dah ould Boushab, Mr. Mouloud ould Boubi, Mr. Ali ould Boubarak Fall, Mr. Sheikh ould Abidin ould Salem and Mr. Bala Touré	Ill-treatment and detention of Mr. Biram Ould Dah Ould Abeid, president of l'Initiative pour la Résurgence du Mouvement Abolitionniste en Mauritanie and detention of Mr. Dah ould Boushab, Mr. Mouloud ould Boubi, Mr. Ali ould Boubarak Fall, Mr. Sheikh ould Abidin ould Salem and Mr. Bala Touré, members of IRA Mauritanie.	Yes 10.02.11	823–848
23. Mexico 1 JUA	JUA	28.06.10	Ms. Blanca Mesina Nevarez and Ms. Silvia Vázquez Camacho	Threats against lawyers	No	849–859
24. Morocco 1 JAL	JAL	11.05.10	Ms. Doha Aboutabit	Ill-treatment of Ms. Doha Aboutabit in police custody; no access to a lawyer	Yes 11.06.10	860–873
25. Nigeria 1 JUA	JUA	28.04.10	Group of individuals	870 individuals on death row, including women and children Imposition of the death penalty following trials with procedural irregularities, right to a fair trial	No	874–881
26. Occupied Palestinian Territory 1 JUA	JUA	29.04.10	Group of individuals including Mr. Mohammad Ismaeil (el Saba'), Mr. Nasser abu Freih, Mr. Mohammed Ibrahim Isma'il (al-Sabe'), Mr. Nasser abu Freih, Emad Mahmoud Sa'd Sa'd, Wael Saéed Sa'd Sa'd, Mohammad Sa'd Mahmoud Sa'd, Ayman Ahmad Awad Daghamah, Mahran Abu Jodah, Anwar Bargheet, Saleem Mohammad El Nabheen, Abed Kareem Mohammad Shrier, Izz El Din Rasem Abed El Salam Daghri, Saleem Mohammed Saleem al-Nabahin	Recent executions, imminent execution of several people following a trial with procedural irregularities, ill-treatment	No	882–889

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
27. Other (Occupied Palestinian Territory - The Authorities in Gaza) 1 JUA	JUA	29.04.10	Group of individuals including Mr. Mohammad Ismaeil (el Saba'), Mr. Nasser abu Freih, Mr. Mohammed Ibrahim Isma'il (al-Sabe'), Mr. Nasser abu Freih, Emad Mahmoud Sa'd Sa'd, Wael Sa'eed Sa'd Sa'd, Mohammad Sa'd Mahmoud Sa'd, Ayman Ahmad Awad Daghamah, Mahran Abu Jodah, Anwar Bargheet, Saleem Mohammad El Nabheen, Abed Kareem Mohammad Shrier, Izz El Din Rasem Abed El Salam Daghri, Saleem Mohammed Saleem al-Nabahin	Recent executions, imminent execution of several people following a trial with procedural irregularities, ill-treatment	No	890–897
28. Pakistan 1 JUA	JUA	23.12.10	Mr. Sarabjit Singh	Sentence to death of Mr. Sarabjit Singh by a special court, ill-treatment while in detention, forced confession, right to a fair trial	Yes 30.12.10 Yes 08.04.11	898–910
29. Panama 1 JUA	JUA	06.09.10	Ms. Magaly Castillo and organization Alianza Ciudadana Pro Justicia	Threats against lawyers	No	911–922
30. Peru 1 JUA	JUA	16.03.10	Mr. Jorge Barreto	Independence of the judiciary; guaranteed tenure; threats against judges	No	923–928
31. Qatar 1 JUA	JUA	08.06.10	Mr. Fawaz Al-Attayah	Arrest and detention of Mr. Fawaz Al-Attayah, a former Qatari national and British national; access to a lawyer	Yes 05.08.10	929–936
32. Russian Federation 3 JUAs 1 AL 2 JALs	JUA	23.06.10	Ms. Sapiyat Magomedova	Attack (ill-treatment) and threats against human rights lawyer Sapiyat Magomedova; freedom to carry out legal work	Yes 13.08.10	937–1020
	JAL	29.10.10	Ms. Sapiyat Magomedova	Idem; lawsuit against lawyer; freedom to carry out legal work (restriction of freedom of movement)	Yes 20.12.10	

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
	JUA	03.12.10	Mr. Oleg Orlov	Lawsuit against Mr. Oleg Orlov, Chairman of human rights organisation Memorial with procedural irregularities	Yes 21.02.11	
	AL	20.12.10	Group of individuals including Mr. Sergei Kvasov and Ms. Zinfira Mirzaeva	Patterns of intimidation, violence against lawyers and interference in the professional discharge of their functions	Yes 21.02.11	
	JUA	23.12.10	Ms. Sapiyat Magomedova	Lack of progress in the investigations into the alleged assault of the lawyer Sapiyat Magomedova, lawsuit against lawyer	Yes 29.03.11	
	JAL	14.01.11	Group of individuals, including Mr. Sergei Magnitsky	Pattern of impunity regarding the deaths of lawyers and human rights activists including impunity concerning the death of Mr. Sergei Magnitsky	No	
33. Saudi Arabia 1 JUA	JUA	30.06.10	Mr. Nacer Naïf Al Hajiri	Access to court to determine legality of the detention of Mr. Al Hajiri, Kuwaiti national; prompt access to a lawyer, right to be informed of criminal charges	No	1021–1028
34. Senegal 1 JUA	JUA	28.01.11	M. Hissène Habré	Impunity for acts of torture	No	1029–1038
35. Serbia 1 AL	AL	23.09.10	Group of individuals; legislation	Non-election of about 837 judges after invocation of the Law on Judges	No	1039–1052
36. Sri Lanka 1 JAL 1 JUA	JAL	13.10.10	Group of individuals: Mr. Dhammala Arachchige Lakshman, Mr. Amarasinghe Arachchige David, Mr. Appuhandhi Kotahewage Nayanjith Prasanna, Mr. Jayakody Arachchilage Oman Perera and Mr. Jayasekara Arachchige Roshan Jayasekara	Deaths in custody, prompt access to court, accountability for perpetrators	No	1051–1073

Country	Type of comm*	Date	Subject(s) concerned	Summary of alleged violations	Status of response	Paragraphs
	JUA	19.11.10	Group of individuals	Administrative detention of about 8,000 persons alleged to be associated with the Liberation Tigers of Tamil Eelam (LTTE) suspects with no access to courts to determine the legality of the detention and no access to a lawyer	No	
37. Sudan 1 JUA	JUA	23.11.10	Group of individuals: Mr. Abdelrahman Mohamed Al-Gasim, Mr. Abdelrahman Adam Abdallah, Mr. Derar Adam Abdallah, Mr. Manal Mohamed Ahmed, Ms. Aisha Sardo Sherif, Ms. Aziza Ali Idris, Mr. Abu Gasim Al Din, Mr. Zakaria Yacoub, Mr. Jaafar Alsabki Ibrahim	Arrest and detention of human rights defenders and lawyer; enforced disappearance, prompt access to lawyer, interference in the professional functions of lawyers, threats to lawyers, freedom of expression of human rights defenders and lawyers	No	1074–1103
38. Syrian Arab Republic 9 JUAs	JUA	18.03.10	Mr. Haithem al Maleh	Trial before a military court and detention of Mr. al Maleh, lawyer and founder of the Human Rights Association in Syria	Yes 01.04.10	1104–1999
	JUA	06.07.10	Mr. Muhannad al-Hasani	Sentencing of Mr. Muhannad al-Hasani, President of the Syrian Human Rights Organization and Commissioner of the International Commission of Jurists following a trial with procedural irregularities	Yes 31.11.10 Response received to the previous communication dated 10.12.09: 29.07.10	
	JUA	13.10.10	Mr. Ismail Abdi	Freedom to carry out legal work Arrest, and alleged disappearance of Mr. Ismail Abdi, lawyer and member of the board of trustees of the Committees for the Defence of Democracy Freedoms and Human Rights in Syria (CDDFHRS)	Yes 01.12.10	
	JUA	09.11.10	Mr. Haytham Al-Maleh	Trial before a military court of a lawyer and founder of the Human Rights Association in Syria; fairness of judicial proceedings	No	

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
	JUA	11.11.10	Mr. Muhannad Al-Hassani	Lawsuit and threats against Mr. Al-Hassani, President of the Syrian Human Rights Organization “Sawasiya” and a Commissioner of the International Commission of Jurists	No	
	JUA	12.11.10	Ms. Eliaza al-Saleh	Criminal conviction of Ms. Al-Saleh, no due account of mitigating factors	No	
	JUA	18.01.11	Mr. Ziad Wasef Ramadan	Arbitrary detention for five years, no access to court and lawyer; right to be informed of criminal charges	No	
	JUA	09.02.11	Mr. Ali Al-Abdullah	Detention and trial of Mr. Al-Abdullah member of the National Council of the Damascus Declaration for National Democratic Change, before a military court	No	
	JUA	18.02.11	Ms. Tal al-Mallohi	Fairness of judicial proceedings, right to be informed of charges while in detention	No	
39. Tajikistan 4 JUAs	JUA	18.03.10	Mr. Nematillo Botakuziev	Detention and ill-treatment of Mr. Nematillo Botakuziev, human rights defender and representative of the Nookat branch of the Kyrgyz NGO “Justice-Truth” which provides legal assistance and representation in criminal trials; access to a lawyer	No	1200–1226
	JUA	29.03.10	Mr. Nematillo Botakuziev	Idem; imminent extradition to the Kyrgyz Republic	Yes 29.03.10	
	JUA	19.11.10	Mr. Ilkhom Ismanov	Arrest and ill-treatment of Mr. Ilkhom Ismanov, a citizen of the Russian Federation and lack of investigations into allegations of torture; access to a lawyer; fairness of judicial proceedings	No	
	JUA	17.02.11	Mr. Ilkhom Ismanov	Idem; access to a lawyer in private	No	
40. Tunisia 1 JUA	JUA	11.10.10	Mr. Fahem Boukaddous	Fairness of judicial proceedings	No	1227–1236

<i>Country</i>	<i>Type of comm*</i>	<i>Date</i>	<i>Subject(s) concerned</i>	<i>Summary of alleged violations</i>	<i>Status of response</i>	<i>Paragraphs</i>
41. Uganda 1 JUA	JUA	23.09.10	Mr. Al-Amin Kimathi and Mr. Mbugua Mureithi	Arrest of Mr. Al-Amin Kimathi, of Kenyan nationality and Executive Coordinator of Muslims Human Rights Forum (MHRF), and Mr. Mbugua Mureithi of Kenyan nationality and a human rights lawyer; interference in the professional functions of the lawyer; no access to lawyer	No	1237–1244
42. United States of America 1 UA	UA	21.06.10	Mr. Juan José Delgado	Disciplinary proceedings against Judge Juan José Delgado, impartiality of judges	No	1245–1250
43. Venezuela (Bolivarian Republic of) 1 JUA	JUA	01.04.10	Ms. Maria Lourdes Afiuni Mora	Independence of the Judiciary; threats against Judge; detention of and charges against Judge Afiuni	Yes 28.07.2010	1251–1269
44. Yemen 1 JUA	JUA	01.04.10	Mr. Ahmed Mohamed Salem Bamuallim	Detention, prompt access to a lawyer and right to be informed of the criminal charges	Yes 07.10.10	1270–1277
45. Zimbabwe 1 JUA	JUA	17.06.10	Mr. Farai Maguwu and other individuals	Arrest and detention of human rights defender Mr. Farai Maguwu, director of the Zimbabwean non-Governmental organization Centre for Research and Development (CRD) Threats to his defence lawyers and improper interference	No	1278–1286



### III. Summary of cases transmitted and replies received

#### Argentina

##### Comunicación enviada

17. El 27 de abril de 2010, la Relatora Especial sobre la independencia de magistrados y abogados, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con el ataque que se habría producido contra el estudio jurídico de la abogada **María Isabel Caccioppolis**. Dicha abogada representaría al Profesor César Manuel Román, querellante en la causa por violación de los derechos humanos acontecida en 1976 contra adolescentes del Centro de Estudiantes de la Escuela Normal de Concepción del Uruguay en la provincia argentina de Entre Ríos.

18. Según las informaciones recibidas, el 8 de abril de 2010, personas desconocidas habrían ingresado por la fuerza en la oficina de la Sra. María Isabel Caccioppolis y habrían provocado importantes destrozos. Los individuos habrían robado documentos y prendido fuego a papeles y a un ordenador. Las llamas habrían alcanzado importante documentación que la abogada tenía en su poder con relación a diferentes causas por violaciones de derechos humanos.

19. La Sra. María Isabel Caccioppolis, que ya habría sido objeto de intimidaciones en el pasado, es una profesional conocida por representar a los querellantes en las causas que se tramitan por violaciones de los derechos humanos durante la dictadura militar en Concepción del Uruguay. Parece que no se trataría de un hecho aislado ya que otros estudios de abogados querellantes en las mismas causas en Paraná, capital de Entre Ríos, habrían sufrido ataques parecidos.

20. Asimismo, hechos similares habrían tenido lugar en otras partes del país durante los últimos meses. El 30 de diciembre de 2009, dos hombres armados se habrían introducido en la Secretaría de Derechos Humanos de la Provincia de Buenos Aires y habrían robado material relacionado con crímenes de lesa humanidad cometidos durante la dictadura así como otros documentos de investigaciones sobre delitos que involucrarían a la Policía provincial. Una comunicación fue enviada por la Relatora Especial sobre la situación de los defensores de los derechos humanos, el 21 de enero de 2010.

21. Se temió que el ataque contra el gabinete jurídico de la Sra. María Isabel Caccioppolis, así como contra otros estudios de abogados querellantes en las mismas y en otras causas, sean indicios de intentos de intimidación a defensores de los derechos humanos y, en particular a abogados, que intentan recabar información y defender casos sobre violaciones de derechos humanos y libertades fundamentales ante la justicia argentina.

##### Comunicación recibida

22. En una carta fechada el 3 de agosto de 2010, el Gobierno respondió al llamamiento urgente con fecha de 27 de abril de 2010.

23. El día 8 de abril de 2010, la Dra. María Isabel Caccioppolis se comunicó personalmente con el Sr. Subsecretario de Derechos Humanos de Entre Ríos, anoticiándolo del robo e incendio de parte de su estudio jurídico en esa madrugada y que la Policía de la Provincia de Entre Ríos había tomado la denuncia de lo acontecido, estando la misma radicada en el Juzgado de Instrucción de turno a cargo del Dr. Mariano Martínez de la ciudad de Concepción del Uruguay.

24. Inmediatamente el Gobierno de Entre Ríos, dispuso por la custodia personal de la Dra. María Isabel Caccioppolis ante los sucesos acaecidos y por expreso pedido de la misma.

25. En conocimiento que el robo e incendio del estudio jurídico podría tener connotaciones relacionadas con el juicio que lleva adelante sobre la denuncia del Prof. César Román, querellante en la causa por violaciones de derechos humanos acontecidas en 1976 contra adolescentes del Centro de Estudiantes de la Escuela Normal de la Ciudad de Concepción del Uruguay, la Subsecretaría de Derechos Humanos se comunicó con el querellante quien esta radicado en la Ciudad de Mar del Plata, a quien se le ofreció custodia personal por intermedio del Subsecretario de Derechos Humanos de la Provincia de Buenos Aires. La Dra. Caccioppolis no ha presentado ninguna queja en este organismo, siendo recibida personalmente por el Sr. Ministro de Gobierno, la Secretaria de Justicia, Seguridad y Derechos Humanos, y el Sr. Jefe de la Policía de Entre Ríos, donde se le brindó todo el apoyo requerido.

26. Ni este Gobierno, ni ninguna organización de derechos humanos de Entre Ríos ha recibido denuncias sobre atentados o intimidaciones a otros abogados querellantes en la Provincia de Entre Ríos.

27. Sobre las investigaciones judiciales, la Dra. María Isabel Caccioppolis es querellante en la causa y este organismo no cuenta con información sobre las investigaciones judiciales, tomándose conocimiento que los autores del hecho fueron apresados, imputándose las autorías de los hechos y negándoseles a la excarcelación al día de la fecha.

#### **Comentarios y observaciones de la Relatora Especial**

28. La Relatora Especial agradece la respuesta del Gobierno de Argentina a la comunicación enviada el 27 de abril de 2010 y en particular, el informe transmitido por la Subsecretaría de Derechos Humanos de Entre Ríos.

29. En este sentido, la Relatora aprecia las medidas tomadas por el Gobierno de Entre Ríos para asegurar la seguridad de la abogada María Isabel Caccioppolis, así como los esfuerzos por parte del Sr. Ministro de Gobierno, de la Secretaria de Justicia, Seguridad y Derechos Humanos, y del Sr. Jefe de la Policía de Entre Ríos de las autoridades públicas para brindarle a la Sra. Caccioppolis el apoyo requerido. Asimismo, la Relatora aprecia la información recibida, indicando que los autores del hecho fueron apresados y sancionados.

30. La Relatora Especial quisiera subrayar la importancia de garantizar un ambiente seguro que permita a los abogados de derechos humanos llevar a cabo su trabajo, de acuerdo con los Principios Básicos sobre la Función de los Abogados, aprobados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en La Habana (Cuba) del 27 de agosto al 7 de septiembre de 1990.

## **Bahrain**

#### **Communication sent**

31. On 15 October 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism sent a urgent appeal concerning the arrest and detention of **Mr. Ali Abdulemam**. Mr. Abdulemam is the creator and manager of the [www.bahrainonline.org](http://www.bahrainonline.org) news website,

and a blogger who regularly wrote articles regarding media freedom and freedom of expression in Bahrain.

32. According to the information received, on 4 September 2010 at approximately 9:00 p.m., Mr. Abdulemam was arrested following a summons, via a telephone call, for questioning by the National Security Apparatus (NSA). Since his arrest, Mr. Abdulemam has been denied access to legal representation, and doubts exist as to whether or not he has been presented before the Public Prosecutor within the time limits proscribed by law. He was denied access to family members until 29 September 2010.

33. Mr. Abdulemam's arrest was reportedly declared by the Ministry of Interior to form part of an investigation into an alleged "terrorist network accused of planning and executing a campaign of violence, intimidation and subversion in Bahrain".

34. According to article 27 of the 2006 "Law to Protect Society from Acts of Terrorism", which was invoked by the authorities in the arrests of Mr. Abdulemam and various other human rights defenders, a suspect may be detained for a maximum of 15 days before either being brought before the Public Prosecutor must question the suspect within three days and either order him remanded or released. Government officials have claimed that Mr. Abdulemam was presented before the Public Prosecutor soon after his arrest. On 22 September 2010 it was announced by officials that, beginning on 27 September 2010, all detained human rights activists would be allowed to receive visits from their families. Mr. Abdulemam's brother, Mr. Hossein Abdulemam, visited the Office of the Public Prosecutor in order to apply for permission to visit Mr. Abdulemam in detention. He was, however, subsequently informed by an official at said Office that Mr. Abdulemam had not been brought before the Public Prosecutor and that there is neither any record of, nor personal number assigned to him, at the Office.

35. Mr. Abdulemam's initial 15-day detention period expired on 19 September 2010; if true, the aforementioned lack of knowledge regarding the case at the Office of the Public Prosecutor would suggest that Mr. Abdulemam's detention continues in contradiction of said legislation.

36. Mr. Abdulemam's wife was allowed to visit him in detention for the first time on 29 September 2010; however, Mr. Abdulemam has yet to be granted access to his lawyer.

37. The Ministry of the Interior has allegedly denied that Mr. Abdulemam's arrest was in any way related to his political views. However, since 5 September 2010 - the day following Mr. Abdulemam's arrest - the BahrainOnline.org website has been unavailable both within Bahrain and abroad. Furthermore, it is feared that Mr. Abdulemam has been compelled to reveal the password for his Internet service.

38. Concern was expressed that the arrest and detention of Mr. Abdulemam may be related to his peaceful and legitimate work in defence of human rights, particularly with respect to freedom of expression. Furthermore, mindful of the allegation that Mr. Abdulemam has yet to be granted access to his lawyer and brought before the Public Prosecutor, serious concern was expressed for his physical and psychological integrity.

#### **Communication received**

39. In a letter dated 15 November 2010, the Government responded to the urgent appeal dated 15 October 2010. It was underlined that the Government has not, and does not, target nor prosecute any individual based on their peaceful views or opinions. Further, Bahrain is committed to the rule of law, and to following the proper legal and constitutional procedures designed to protect the rights of all in society. In the case of Mr. Abdulemam, it was indicated that the summary set out in the communication is inaccurate.

40. Mr. Abdulemam was arrested on 4 September on the basis of evidence of his membership of a terrorist network. Investigations have found the network to be responsible for inciting and planning terrorist acts, inciting hatred and contempt against the government, threatening public order and endangering the safety and security of the Kingdom. The aim of the network is to overthrow and change the political system of the country by force, dissolve the constitution and obstruct the enforcement of its provisions. The network recruited nationals and foreigners, youngsters and adults, and incited them to commit acts of riot, violence and vandalism, disturbance of civil peace, attacking security personnel, nationals and foreigners residing in Bahrain, terrorizing them and damaging their private property.

41. All such acts are punishable crimes pursuant to Law No. 58 of 2006 with respect to Protecting the Community from Terrorist Acts. This law grants Judicial Officers the right subject to the emergence of sufficient evidence, to issue a protective custody order for a period not exceeding five days, and if necessary, permission may be obtained from the Public Prosecution to extend the custody to a period not exceeding 10 days. Such permission is strictly granted if the Judicial Officer provides sufficient evidence that the extension of the custody is essential for the continuation of the investigations. Given the nature of Mr. Abdulemam's suspected crimes, he was arrested under this Law No. 58 of 2006 with respect to Protecting the Community from Terrorist Acts, and not under Bahrain's Code of Criminal Procedure which provides that suspects must be brought before the Public Prosecution within 48 hours of arrest.

42. Prior to the elapse of the five day protective custody, Mr. Abdulemam was duly referred to the Public Prosecution on 9 September 2010, which commenced and handled criminal proceedings. Following intensive investigations by prosecutors, Mr. Abdulemam was charged under the Penal Code No. 15 of 1976 and Law No. 58 of 2006 with respect to Protecting the Community from Terrorist Acts. He is currently facing the following charges: joining an outlawed organization with the aim of violating the law and disrupting provisions of the constitution and to prevent public authorities from exercising their duties, using terrorism and violence; inciting to acts of sabotage, destruction and arson, publicly instigating sectarian hatred which disturbs civil peace; and spreading provocative propaganda, news and false statements to destabilize public security and cause damages to public interests.

43. Contrary to the fears expressed in the communication, on 23 September, the Public Prosecution gave permission to the families of defendants in this case to visit those in custody, and Mr. Abdulemam's family subsequently visited him on 29 September.

44. In relation to the Working Group's concern regarding whether the acts shall be criminalized as terrorist, the first two conditions (means used and intent) put forward by the group will be demonstrated. Firstly, with respect to the means used. The sabotage groups have been committing acts of violence, rioting, vandalizing private and public properties, carrying out arsons, blocking highways and crippling all forms of life activities. These groups have added violence to their acts by using Molotov bombs, homemade bombs and sharpened iron bars. Molotov bombs are considered as improvised incendiary weapons and are primarily intended to set targets ablaze and destroy them. In fact, two police were killed in two separate horrific attacks by Molotov bombs: a policeman, and an innocent Pakistani passer-by, father of five.

45. Secondly, it is clear that the intent of these acts was to undermine public order, and to cause fear among the general population, for example by carrying out their attacks at night to spread even greater fear among the general public. Indeed, some of the suspects have admitted that this was their intent.

46. Therefore, given that the acts of the groups in question clearly amount to serious (sometimes deadly) violence, and given that their intent was to cause fear among the population and to disrupt public order, it can clearly be seen that the activities amount to acts of criminal terrorism.

47. It is worth mentioning that Mr. Abdulemam, along with other members of the network, have sought to label their acts of violence as human rights activism or peaceful demonstrations or protest. It goes without saying that inciting to acts of riot, violence and vandalism under the guise of promoting and protecting human rights is a flagrant violation of Article 3 of the Universal Declaration of Human Rights which stipulates that everyone has the right to life, liberty and security of person. The Government of Bahrain is bound to protect individuals and groups against the abuse of these fundamental rights.

48. Mr. Abdulemam is the creator of the *www.bahrainonline.org* website, which he has managed for many years. He provided that he has created this forum to instigate sectarian hatred and to spread provocative propaganda, news and false statements to destabilize public security and damage public interest. The leaders and members of the terrorist network have used this website, with the knowledge and observance of Mr. Abdulemam, to incite acts of sabotage, violence and terrorism. Furthermore, this website is known to praise such acts by posting footage and photos of the destruction and damage caused by those groups, along with glorifying them as heroes. Mr. Abdulemam has confirmed that he was funded by leaders of the terrorism network for doing so.

49. With regard to the concern expressed by the Working Group with respect to the physical and psychological integrity of Mr. Abdulemam, it is underlined that the Government of Bahrain fully reaffirms its adherence to the provisions stipulated in the UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment. All persons under any form of detention are treated in a humane manner and with respect for their physical and mental integrity and inherent dignity of the human person. Any arrest, detention or imprisonment is only carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose. Convinced that the adoption of this Body of Principles would make an important contribution to the protection of human rights, Bahrain has prohibited by law any act contrary to the rights and duties contained therein.

50. Mr. Abdulemam is charged with criminal offences. He preserves his right to be presumed innocent and is treated as such until proved guilty in a public trial according to law, at which he has all the guarantees necessary for his defence. In this connection, Bahrain restates its commitment to preserving the suspect's right to fair proceedings before an independent and impartial tribunal to determine the criminal charges against him. The law guarantees the independence of the judiciary and the probity and impartiality of judges. In this context, attention is drawn to article 104 of the Constitution of Bahrain, which stipulates "No authority shall prevail over the judgment if a judge, and under no circumstances may the course of justice be interfered with."

51. Mr. Abdulemam has exercised his constitutional and legal rights with regard to his legal representation. Although he has refused to appoint a counsel for himself and no counsel has taken the initiative to represent him, he was legally represented in the first court hearing that was held publicly on 28 October 2010. As provided by the relevant legislation, if a suspect does not have legal counsel, one will be assigned to him by the court at its expense. Further, judgments of the criminal court may be challenged before the courts of Appeal, while the Courts of Cassation can examine the compliance of the judgments of the foregoing courts with the law.

52. Finally, leaders and members of the terrorist network, along with all citizens of Bahrain, preserve their right of the legitimate and peaceful work in the defence of human

rights, as enshrined in the Declaration on Human Rights Defenders. They also preserve the right of freedom of expression and opinion, as enshrined in the Constitution of Bahrain which provides that everyone has the right to express his opinion and publish it by word of mouth or in writing under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused. Legal action is only exercised against those who deviate from the scope of the legitimate and peaceful work in the defence of human rights and freedom of expression and recourse to the execution of acts amounting to the abuse of law.

53. In conclusion, the Government of Bahrain reaffirms its guarantee to provide all necessary measures to ensure that Mr. Ali Abdulemam is not deprived arbitrarily of his liberty and is entitled in full equality to fair proceedings before an independent and impartial tribunal. Bahrain acknowledges the significant role of the Human Rights Council in the contribution to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, and fully supports its efforts in promoting universal respect for human rights along with its determination to examine thoroughly all the cases brought to its attention.

#### **Comments and observations of the Special Rapporteur**

54. The Special Rapporteur thanks the Government for the response to the communication dated 15 October 2010 which clarifies the case of Mr. Abdulemam. The Special Rapporteur takes note of the criminal charges retained against Mr. Ali Abdulemam and of the information indicating that he was referred to Public Prosecution on 9 September 2010. The Special Rapporteur welcomes the information that in the absence of a lawyer appointed to the suspect, legal counsel is assigned to him/her by the court at its expense. She further notes the information which indicates that Mr. Abdulemam was legally represented in the first court hearing that was held publicly on 28 October 2010. In this regard, the Special Rapporteur wishes to recall that legal representation should be provided at all stages of criminal proceedings in accordance with the Basic Principles on the Role of Lawyers.

### **Bangladesh**

#### **Communication sent**

55. On 17 February 2011, the Special Rapporteur on the independence of judges and lawyers; Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal concerning the detention of **Ms. Moshrefa Mishu**, a leftist political activist, General Secretary of the Ganatantrik Biplobi (Democratic Revolutionary) Party and President of the Garment Workers Unity Forum (GWUF).

56. According to the information received, on 14 December 2010, Ms. Mishu was arrested by members of the Dhaka Metropolitan Police and taken into custody by the Detective Branch of the Dhaka Metropolitan Police and detained in the Dhaka Central Jail.

57. It is reported that prior to her arrest, in the evening of 13 December 2010, Ms. Mishu received two calls on her mobile phone. Both callers claimed to be journalists wishing to interview her and asked her to stay home. It is further reported that on previous occasions, Ms. Mishu had received calls from unidentified phone numbers, including alleged death threats from the callers who would introduce themselves as officers of intelligence agencies and the Special Branch of police.

58. In the early morning of 14 December 2010, at approximately 1:35 a.m., twelve plain-clothed persons comprising nine heavily armed men and three women forcibly entered into Ms. Mishu's house. According to the information received, they claimed to be members of the Detective Branch of the Dhaka Metropolitan Police. Reportedly, they searched the house without a search warrant. Ms. Mishu was taken to the local police station without being presented with an arrest warrant. She was told that they were instructed to follow the orders of the "upper level of the government" and that if Ms. Mishu failed to follow their orders, they would use force against her. They did not allow the family to make any phone calls to the authorities, friends or relatives.

59. According to the information received, Ms. Mishu was not allowed to carry her emergency medicines, inhaler and clothes despite repeated requests. Ms. Mishu was put into a vehicle, which was not recognizable as belonging to the police, and driven around the city for few hours before reaching the office of the Detective Branch of the Dhaka Metropolitan Police located at 36 Minto Road at approximately 5:00 a.m. It is reported that on 14 December 2010, from 7:00 a.m. until 2:00 p.m., Ms. Mishu was interrogated by Additional Deputy Commissioner of the Detective Branch Mr. Nazrul Islam, Assistant Commissioner Muniruz Zaman and Assistant Commissioner Nasir. The subject of interrogation related to Ms. Mishu's visits abroad, the funders of her political activities, her relationship with external groups in China as well as her attachment with the workers' movements for an increase of wages in the Ready Made Garment (RMG) sector in Bangladesh. It is reported that the police repeatedly insisted on her signing on a blank piece of paper. Ms. Mishu refused to follow such orders and was allegedly subjected to several death-threats by the police officers.

60. According to the information received, Ms. Mishu was informed by the police that she was the subject of three pending cases. The first two cases were registered with the Kafrul police station (dated 30 June 2010, No. 76(6) 10, Government Register No. 386/10, under Sections 143, 149, 323, 324, 325, 332, 333, 353, 427, and 114 of the Penal Code; and dated 9 December 2010, No. 21(12) 10 of the Kafrul police, Government Register No. 854/10, under Sections 143, 448, 379, 427, and 506 of the Penal Code). The third case was lodged with the Khilkhet police of the Dhaka Metropolitan Police on 12 December 2010 (No. 13 (12) 10 of Khilkhet police, Government Register No. 255/10, under Sections 147, 148, 149, 332, 333, 353, 436, 379, 427, and 109 of the Penal Code).

61. It is further reported that Ms. Mishu was produced before the Chief Metropolitan Magistrate Court of Dhaka in the first two cases. The police submitted a petition requesting 10 days remand for Ms. Mishu. In the first case, the Magistrate Mr. A. I. H. granted remand for two days to the Kafrul police. In the second case, he rejected the remand petition.

62. Subsequently, Ms. Mishu was produced before the Chief Metropolitan Magistrate's Court of Dhaka for the third case. The police submitted another petition seeking 10-days remand. The First Additional Magistrate Mr. A. H. R. B. ordered the Khilkhet police to submit the 'Case Diary' on the following day. On 19 December 2010, instead of Mr. A. H. R. B., Metropolitan Magistrate, Mr. M. A. M. heard the remand petition of the Khilkhet police. During the hearing, Ms. Mishu's health condition deteriorated due to a chronic bronchial asthma and spinal pain. The Metropolitan Magistrate Mr. M. A. M. rejected a bail petition of Ms. Mishu's lawyer. Allegedly, the Magistrate stated as follows "I have strict direction from the Government that in any situation and at any cost not to grant bail to Mishu".

63. According to the information received, the Magistrates involved in the cases against Ms. Mishu entertained all the petitions for remand written in plain paper by the police without a prescribed application on Bangladesh Police Form No. 90. According to the source, the validity of such petitions is doubtful. It is reported that in accordance with the directives passed by a Divisional Bench of the High Court Division of the Supreme Court

of Bangladesh, as reported in Dhaka Law Report No. 55, a Magistrate should form a medical board to examine a detainee before sending the person to police remand. It is also alleged that during the periods of remands granted by the Magistrates, Ms. Mishu was taken into the custody of the Detective Branch of the police rather than of Kafrul or Khilkhet.

64. It is reported that in the light of Ms. Mishu's critical health condition during the Court's hearing on 19 December 2010, the Magistrate ordered to arrange medical treatment and she was subsequently taken to the National Hospital, which in turn referred to the Bangabandhu Sheikh Muzib Medical University. Ms. Mishu was not admitted to the latter due to an intervention of a police officer. As a result, she was transferred to the Dhaka Medical College Hospital but was refused treatment.

#### **Communication received**

65. On 9 March 2011, the Government of Bangladesh acknowledged receipt of the communication and indicated that it would be forwarded to the concerned authorities for their necessary inquiry and actions.

#### **Communication sent**

66. On 21 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the situation of **Mr. Salauddin Quader Chowdhury** (aged 63), a Member of Parliament from the opposition Bangladesh National Party (BNP).

67. According to the information received, in the early hours of 16 December 2010, Mr. Chowdhury was arrested by the security forces of Rapid Action Battalion, Detective Branch police, and the Directorate-General Foreign Intelligence at his apartment in Benani neighbourhood in Dhaka, Bangladesh. It is reported that the arrest was linked to an incident in June where a car was set on fire in Dhaka, killing a passenger. Reportedly, Mr. Chowdhury has not been charged, nor has he had access to a lawyer since his arrest and was only allowed to meet his relatives for the first time on 22 December 2010.

68. It is further reported that following his arrest on 16 December 2010, Mr. Chowdhury was subjected to torture by the Bangladeshi security forces during interrogation at a private residence, with a physician accompanying them. Mr. Chowdhury was reportedly tortured for several hours, including by applying electrodes to his genitals, beating him, slitting his stomach with razors and twisting his toenails and fingernails with pliers. It is further reported that Mr. Chowdhury was repeatedly revived after falling unconscious during the ordeal. Only when his condition further deteriorated under interrogation, was he taken to the Bangabandhu Medical Hospital for treatment (at 7:30 a.m. in the morning of 16 December 2010). Reportedly, video footage taken in the hospital grounds showed Mr. Chowdhury as weak, in pain, unable to walk on his own and with an apparent blood stain on his shirt. After an hour in the hospital, Mr. Chowdhury was reportedly taken to the headquarters of the Detective Branch of the Police, where he was again subjected to torture, including by further electrocution. It is alleged that when Mr. Chowdhury was first visited by his relatives on 22 December 2010, he was in a critical health condition, his genitals and nose were still bleeding three days after the most recent electrocution, and there were cut marks on his stomach and bruises all over his body.

69. The arrest and alleged torture of Mr. Chowdhury had been widely reported in the local media. Following several media inquiries, the Inspector General of Police reportedly denied that Mr. Chowdhury had been tortured and informed the media that on the morning of 16 December 2010, he was taken to hospital to be treated for an asthma condition.



70. It is further reported that Mr. Chowdhury was likely to undergo additional interrogation by the police following the charges of involvement in crimes against humanity and a subsequent arrest warrant brought against him on 19 December 2010, by Bangladesh's International Crimes Tribunal, which had been set up to try crimes committed during the 1971 war of independence. On 22 December 2010, following the Court order, Mr. Chowdhury was reportedly placed in Dhaka Central Prison pending proceedings in both the June and the 1971 cases. It is reported that Mr. Chowdhury was not present at the Court hearing and had not been allowed to meet his lawyers. He had reportedly been kept in the holding cell downstairs and was later transferred to a remote prison outside Dhaka.

71. Despite the reported deterioration in his health, Mr. Chowdhury has since his arrest reportedly been denied access to independent, specialized medical treatment. Moreover, the Government has reportedly actively sought, through the courts, to ensure that such access is denied. Reportedly, on 2 January 2011, in response to Mr. Chowdhury's wife's petition to the High Court Division of the Supreme Court seeking admission to a cardiac hospital for independent medical treatment, the High Court Division ordered on 3 January 2011, that Mr. Chowdhury be given access to medical treatment within two days. However, following an appeal by the Government, the Appellate Division of the Supreme Court stayed the order for six weeks on 4 January 2011.

72. It is further reported that on 5 February 2011, upon arrival in Kashipur Central Jail where Mr. Chowdhury was being detained, Mr. Chowdhury's relatives were told that he was unwell and physically unable to see them. Only when the ambulance arrived to take Mr. Chowdhury to hospital, was the family able to see him. It is claimed that Mr. Chowdhury's health severely deteriorated while in Kashipur Central Jail, and may have had a stroke. It is alleged that Mr. Chowdhury was taken to the Government Bangubandhu Sheikh Mujib Medical University Hospital, but that he refused to be treated there and claimed to have recognised the doctors who have participated in reviving him after he was repeatedly tortured in December 2010. It is reported that Mr. Chowdhury was taken back to prison and possibly put into solitary confinement.

73. It is also reported that on 6 February 2011, the family members were not allowed to see Mr. Chowdhury in Kashipur Central Jail and were told by the prison guard that the visiting hours were over and that they should try to come back another day. In an attempt to visit Mr. Chowdhury on 8 February 2011, the family members and Mr. Chowdhury's lawyer were told by the prison doctor that Mr. Chowdhury refused to meet them as he was weak and physically unable to walk.

74. Serious concern is expressed about the physical and mental integrity of Mr. Chowdhury in view of his deteriorating health condition. Further concern is expressed about the allegations according to which Mr. Chowdhury has not been provided with an independent medical examination or treatment. Finally, concern is expressed about the failure to investigate allegations of torture to which Mr. Chowdhury has reportedly been subjected while in the prison.

#### **Communication received**

75. On 9 March 2011, the Government of Bangladesh acknowledged receipt of the communication and indicated that it would be forwarded to the concerned authorities for its necessary inquiry and actions.

#### **Comments and observations of the Special Rapporteur**

76. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to the above-mentioned urgent appeals dated 17 and 21 February 2011. The Special Rapporteur considers response to her communications an important part

of the cooperation between governments and her mandate and as such requests that the Government of Bangladesh provide details about the issues raised in the aforementioned communication at the earliest possible date.

## **Belarus**

### **Communication sent**

77. On 28 January 2011, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning information submitted to their attention indicating that the **Belarusian Helsinki Committee** was requested by the Ministry of Justice to submit a copy to it of the letter addressed to the Special Rapporteur on the independence of judges and lawyers. The Belarusian Helsinki Committee is an independent, non-political, non-profit public association which works to promote and protect human rights providing legal assistance and regularly holding human rights seminars and training courses. We have also received information concerning alleged interference in the professional discharge of functions of lawyers in connection with the 19 to 20 December 2010, demonstrations.

78. According to information received, on 12 January 2011, the Belarusian Helsinki Committee (BHC) posted on its website information that it had sent a letter to the Special Rapporteur on the independence of judges and lawyers. Immediately after, the head of department of non-commercial organizations of the Ministry of Justice reportedly sent a fax to the BHC requesting it to provide him with the text of letter within 30 minutes.

79. On the same day a statement was issued by the Ministry of Justice accusing the BHC of distorting information contained in reports issued by the Ministry regarding the demonstrations. The Ministry also alleged that the information sent by the BHC to international organizations distorted the present state of affairs in the country and that such conduct was tantamount to a violation of legislation governing Non-Governmental Organizations.

80. We have also received reports alleging interference in the lawyers' discharge of professional functions in their capacity as defense counsel of those clients associated with the demonstrations which occurred on 19 and 20 December 2010. It is alleged that arrested persons are prevented from meeting their lawyers in private and the frequency of visits by counsel to meet their clients is restricted.

81. We are informed that national legislation governing confidentiality of investigations provides for "secrecy of investigation". It is alleged that the provision is being used by investigators at the Minsk City Department of Interior as a means of prohibiting lawyers from disseminating any information related to the investigation and the whereabouts of those arrested in connection with the demonstrations.

82. On 29 December 2010, the Ministry of Justice issued a statement alleging that comments made by some lawyers providing legal defense to people arrested in connection with the demonstrations violated the professional ethics of lawyers. The statement alleged that some lawyers were misrepresenting information relating to investigations, opportunities for their clients to seek legal assistance, their clients' health status and prison conditions, and the work of law enforcement bodies.

83. On 5 January 2011, the Ministry of Justice is alleged to have sent letters to several lawyers including **Ms. Tamara Sidarenka** and **Mr. Paval Sapelko**.

84. The letter sent to Ms. Tamara Sidarenka, alleged that on 24 December 2010, during an interview she falsely represented that she was prevented from meeting her client and that

such conduct undermined lawyers obligations to maintain professional and personal dignity and violated professional ethics of the legal profession. We are informed that the Ministry of Justice ordered Ms. Sidarenka to take measures to prevent such misrepresentation of information. She was instructed to inform the Ministry on measures taken to implement the order by 15 January 2011, otherwise her license would be revoked.

85. The letter sent to Mr. Pavel Sapelko, who is representing one of the presidential candidates arrested during the demonstration, alleged that he had made incorrect statements against the college of lawyers, the treatment of his client and the conditions of his detention. It also alleged that he had made comments regarding pressure from the State on the work of State lawyers, especially in the defense of his client. We are informed that the Ministry of Justice requested the Minsk City Bar to take disciplinary action against Mr. Sapelka. On 10 January 2011, Mr. Sapelko received a letter from the Ministry of Justice that disciplinary action had been initiated to revoke his license.

86. There have also been other reports of interference. For example, on 4 January 2011, the Collegium of the Ministry of Justice endorsed a decision of the Ministry's Bar Qualification Commission made on 3 January 2011, to suspend the license of Ms Valiantsina Bus'ko, an advocate of Hrodna Regional Bar. She was suspended for her participation in the demonstrations. In addition, on 10 January 2011, the General Prosecutor's Office initiated a case against **Mr. Mikhail Volchak** for divulging information related to a criminal investigation against the former Senior Investigator of the General Prosecutor's Office who was investigating corruption cases.

#### **Communication received**

87. In a letter dated 1 February 2011, the Government acknowledged receipt of the communication dated 28 January 2011 and indicated that the aforementioned appeal cannot be brought to the attention of relevant Belarusian authorities due to the absence of its translation from English into Russian.

#### **Communication sent**

88. On 10 March 2011, the Special Rapporteur on the independence of judges and lawyers sent an urgent appeal concerning the alleged pattern of intimidation and interference in the discharge of the professional functions of lawyers, including the lawyers named **Mr. Uladzimir Toustsik, Ms. Tamara Harayeva, Mr. Aleh Aheyeu, Ms. Tatsiana Aheyeva** and **Mr. Pavel Sapelka** in connection with the December 2010 demonstrations and events.

89. The Special Rapporteur drew to the attention of the Government of Belarus that allegations of intimidation and interference in the discharge of professional duties of lawyers had been previously addressed in the joint urgent appeal dated 28 January 2011 sent jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders and a joint urgent appeal was also sent on 25 February 2011 concerning multiple allegations of harassment, arrests and interrogation of numerous human rights defenders including human rights lawyers in Belarus following the presidential elections held in December 2010.

90. According to the information received, on 29 December 2010, the Ministry of Justice issued a statement, published on its official website, alleging that a number of lawyers had breached the legislation on the legal profession and professional ethics by presenting information about investigations, their clients' opportunities to avail themselves of legal assistance, their clients' health status and conditions of detention, and the work of the law enforcement bodies of the country in a biased manner. The Ministry further

recommended that the head of the Minsk City Bar Association take immediate measures to ensure full compliance with the legislation and requirements of professional ethics by lawyers.

91. Reportedly in January 2011, the Minsk City Bar Association which had not found any breaches of professional ethics by lawyers, refused to initiate disciplinary proceedings. In this context, it is alleged that the Ministry of Justice organized and undertook an inspection of the Minsk City Bar Association, the results of which were considered at meetings held by the Bar Qualification Commission and the Ministry of Justice Board. According to the results, several lawyers whose names are Mr. Uladzimir Toustsik, Ms. Tamara Harayeva, Mr. Aleh Aheyev and Ms. Tatsiana Aheyeva were found guilty of breaches of the legislation on the legal profession and professional ethics. Subsequently, their licenses to practise as lawyers were reportedly revoked by the Ministry of Justice on 14 February 2011. It is further alleged that the Ministry instructed the Minsk City Bar Association to take immediate actions to secure legal assistance for the former clients of the aforementioned lawyers and has sent several requests calling for disciplinary measures against lawyers.

92. The following information concerning the four lawyers mentioned above has in particular been brought to the attention of the Special Rapporteur, as well as the case of **Mr. Pavel Sapelka**:

93. a) **Mr. Uladzimir Toustsik**, a lawyer practising in Minsk, with license No. 1337 of 25 January 2008, is the defence lawyer of Ms. Iryna Khalip, the wife of the former presidential candidate, Mr. Andrei Sannikau. Ms. Khalip was allegedly held in detention by the State Security Committee (SIZO KGB) from 20 December 2010 to 29 January 2011, and was represented by Mr. Toustsik in this case. It is however alleged, that she had to renounce his legal services due to pressure by KGB officers and threats to withdraw Mr. Toustsik's license to practise as a lawyer. On 14 February 2011, the Ministry of Justice decided to disbar Mr. Toustsik for breaches of professional ethics of the legal profession, notably for his alleged refusal to provide Ms. Iryna Khalip with legal assistance. Information received indicates that Mr. Toustsik will challenge this decision on the basis of its legal irregularities.

94. b) **Ms. Tamara Harayeva**, a lawyer with license No. 227 of 26 December 2003, practising at the legal consultation office No. 2 of Savetski district in Minsk (Melezha Street 4), reportedly took over the legal defence of Ms. Khalip, former client of attorney Toustsik. It is reported that on 4 February 2011, Ms. Harayeva notified Ms. Khalip's parents that she had to withdraw from representing her due to the intimidation being exerted. Subsequently, the Ministry of Justice reportedly decided to revoke Ms. Harayeva's license on 14 February 2011 for alleged breaches of professional ethics of the legal profession, notably for her alleged refusal to provide Ms. Iryna Khalip with legal assistance.

95. c) **Mr. Aleh Aheyev**, a lawyer with license No. 745 of 20 February 2004, practising at the legal consultation office of Leninski district in Minsk (Ulyanauskaya Street 4), and a member of the Minsk City Bar Presidium, is the defence lawyer of Mr. Aleś Michalevič, a former presidential candidate currently detained at the KGB detention facility for having allegedly staged massive protests. It is alleged that on 14 February 2011, KGB officers attempted to seize Mr. Aheyev's working documents. On the same day, the Ministry of Justice reportedly decided to disbar Mr. Aheyev for alleged breaches of professional ethics of the legal profession and for providing inaccurate information.

96. d) On 14 February 2011, the license No. 344 of 26 December 2003 of **Ms. Tatsiana Aheyeva**, member of the Judicial Board of Zavodski district in Minsk (Partyzanski Avenue

91), was reportedly revoked for alleged breaches of professional ethics of the legal profession and for providing inaccurate information.

97. e) On 4 March 2011, **Mr. Pavel Sapelka** was reportedly excluded from the Minsk City Bar Association by decision of its Board, on recommendation of the Ministry of Justice. Mr. Sapelka, with license No. 1337 of 25 January 2008, had been working as a lawyer in office No. 2 of Savetski district in Minsk (Melezha Street 4) since 1994. It is reported that he was defending three well-known politicians, Mr. Andrei Sannikau, former presidential candidate, also accused of having organized the protests of 19 December 2010 and currently detained in the KGB jail (Committee of State Security); Mr. Pavel Seviarynets, Head of Electoral Headquarters of the former presidential candidate Mr. Vitali Rymasheyvsky, detained in the same facility on the same charges as Mr. Sannikau; and Mr. Dzmitry Dashkevich, leader of "Young Front", a pro-democratic youth organization.

98. Furthermore, the Special Rapporteur was informed that defence lawyers involved in at least 17 cases involving former presidential candidates or other persons suspected or accused in relation to the events which took place on 19 December 2010, have been prevented from meeting with their clients since December 2010.

#### **Communication received**

99. In a letter dated 14 March 2011, the Government acknowledged receipt of the communication dated 10 March 2011 and indicated that the aforementioned appeal cannot be brought to the attention of relevant Belarusian authorities due to the absence of its translation from English into Russian.

#### **Comments and observations of the Special Rapporteur**

100. The Special Rapporteur regrets the absence of an official reply to communications dated 28 January and 10 March 2011. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and calls upon the Government of Belarus to transmit responses to the above-mentioned communications.

101. She also expresses her concern at the information received, alleging a pattern of intimidation and interference in the discharge of the professional functions of lawyers. In this respect, the Special Rapporteur wishes to reiterate the need to guarantee the right of lawyers to freely represent their clients and perform their professional activity without fear, intimidation and interference. In this respect, the Special Rapporteur would like to stress once again the importance for Governments to respect and take into account the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, aimed at assisting Member States to protect and ensure the proper role of lawyers.

### **Bolivia**

#### **Comunicación enviada**

102. El 27 de mayo de 2010, la Relatora Especial sobre la independencia de magistrados y abogados, envió un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación a la **cesación**, el 17 de mayo de 2010, **de 22 Magistrados de Segunda Instancia por el Consejo de la Magistratura** del Estado Plurinacional de Bolivia.

103. Según las informaciones recibidas, dichos Magistrados habrían sido cesados en virtud de que no constaba en sus expedientes personales haber aprobado el examen de

competencia para su ingreso en la Judicatura. Sin embargo, dichos Magistrados habrían ingresado al Poder Judicial durante los años 1999 y 2000, cuando no se requería tal examen, mediante una convocatoria pública del propio Consejo de la Magistratura, es decir, del mismo Consejo que hoy les destituye. Los jueces habrían ingresado a la carrera judicial por concurso de méritos en el cual se examinó detenidamente sus antecedentes y capacidades, tanto personales como profesionales.

104. Igualmente, se informó que, una convocatoria para que rindiesen tal examen en 2007 habría sido declarada nula por el Tribunal Constitucional en virtud de una acción de garantías. Según se expresó, dicha declaración de nulidad, emitida por la máxima autoridad jurisdiccional constitucional, produce efecto de cosa juzgada y debería alcanzar a brindar la seguridad del derecho reconocido, dado que la cosa juzgada es un principio general básico del derecho que se vincula con el principio de orden público de “*non bis in idem*”.

105. Según la información recibida, el Consejo de la Magistratura carecería por lo tanto de competencia para dictar el Acuerdo 033/2010 que dispuso el cese de los 22 Magistrados de Segunda Instancia, cuya destitución atentaría contra el principio de la cosa juzgada y contra la seguridad del derecho reconocido y sería en clara contravención con los principios generales básicos del Derecho y de las garantías del debido proceso.

106. Se ha informado también que tras de producirse la destitución de los 22 Magistrados, sus Juzgados fueron allanados, las cerraduras de sus puertas cambiadas y sus ordenadores y discos duros revisados. Finalmente, se informó que tres de los cuatro integrantes del Consejo de la Magistratura que ordenaron el cese habrían sido nombrados en febrero de 2010 por el Poder Ejecutivo.

107. Se expresó preocupación por la destitución de los 22 magistrados, la cual representa un grave ataque contra la independencia del Poder Judicial del Estado Plurinacional de Bolivia, así como para la independencia e imparcialidad de los jueces y magistrados bolivianos.

#### **Comunicación recibida**

108. En una carta fechada el 12 de agosto de 2010, el Gobierno respondió al llamamiento urgente con fecha de 27 de mayo de 2010.

109. Conforme a lo manifestado en el informe remitido por el Consejo de la Judicatura en fecha 19 de julio de 2010, los señores vocales [22 magistrados] nunca se sometieron al Subsistema de Ingreso a la carrera judicial vigente con anterioridad a las citadas designaciones. Los señores vocales cesados fueron designados entre las gestiones 1999 y 2000, con base a una convocatoria pública que sólo exigía el sometimiento a un concurso de méritos, en contravención a la Ley del Consejo de la Judicatura que establece en sus artículos 24 y 25 el sometimiento de los postulantes a concurso de méritos, examen de oposición y cursos de capacitación. Las designaciones mencionadas por contener vicios de nulidad pretendieron subsanarse mediante el Acuerdo N° 374/006 de 3 de octubre de 2006, que dispuso convocar a un examen de oposición de dichos operadores de justicia, sin embargo tal determinación no fue acatada por los vocales, quienes impugnaron la decisión agotando los recursos administrativos y plantearon una acción de Amparo constitucional, acción que fue declarada procedente mediante la sentencia constitucional N° 0495/2007-R de 13 de junio de 2007.

110. En la Sentencia de referencia, el Tribunal Constitucional argumentó que la destitución de un juez, solo emerge de una sentencia condenatoria ejecutoriada, situación que –según el Consejo de la Judicatura– sucedido por un error de interpretación, toda vez que si bien un juez no puede ser destituido por no haber rendido su examen de oposición, éste si podría ser ratificado o cesado en sus funciones, en tal sentido la cesación y destitución se encuentra claramente diferenciados y responde a causas ajenas entre sí, de

acuerdo a los artículos 40 y 41 del Reglamento del Sistema de la Carrera Judicial. El Consejo de la Judicatura manifestó en su informe que eran más de 10 años, que se mantuvo latente la irregularidad en las designaciones de los señores Vocales cesados, dado que, al margen de no haber sido sometidos a un examen de oposición, como requisito sine qua non para ingresar a la Carrera Judicial, tampoco pretendieron salvar esta omisión acogiéndose a la convocatoria de examen de oposición.

111. Asimismo, previamente el 14 de febrero de 2003, el Tribunal Constitucional en la sentencia constitucional N° 0014/2003, se habría referido a la situación de los jueces, estableciendo que “(...) *los funcionarios o servidores judiciales ingresaran al sistema de carrera judicial, cumpliendo con las condiciones y requisitos previstos en la ley; no se opera de manera automática, lo que significa que, quienes ingresaron al Poder Judicial con el anterior sistema, deben concluir su periodo de mandato y luego someterse a las condiciones y requisitos previstos para ingresar al nuevo sistema*”, sentencia que fue desconocida por los vocales citados, dando por hecho su incorporación a la carrera judicial.

112. El informe del Consejo de la Judicatura destaca que nadie puede ser evaluado si no fue debidamente incorporado en la carrera judicial, en resguardo del principio de legalidad y al amparo de la SC N°0014/2003, se dispuso dar por concluida la relación laboral con los señores vocales ilegalmente designados en las gestiones 1999 y 2000, para lo cual se emitió el Acuerdo N° 033/2010 de 3 de mayo de 2010.

113. El Consejo de la Judicatura informó que los vocales cesados al no haber cumplido con todos los requisitos de ingreso a la carrera judicial, no gozaban de continuidad e inamovilidad funcionaria; y el Consejo de la Judicatura, como máxima autoridad administrativa y disciplinaria del Órgano Judicial, tiene el deber y la obligación jurídica de cumplir y hacer cumplir la Constitución y las leyes; en el caso particular, se dispuso la cesación al amparo de la atribución conferida en materia de Recursos Humanos establecida en el Artículo 13 numeral 4) de la Ley N° 1817, Ley del Consejo de la Judicatura, que dispone “*Administrar los sistemas de carrera judicial y selección de personal de los funcionarios judiciales y personal administrativo*”.

114. La Constitución Política del Estado prevé un conjunto de garantías jurisdiccionales y acciones de defensa a favor de las personas cuando sus derechos fundamentales se consideran suprimidos o restringidos. En el caso particular la cesación de un funcionario puede ser impugnada mediante un recurso de revocatoria ante la misma autoridad que dispuso la cesación y mediante la acción contenciosa administrativa ante la Corte Suprema de Justicia, asimismo cuando dichas instancias se encuentren agotadas el Estado brinda la acción de Amparo Constitucional como acción extraordinaria y subsidiaria de protección de derechos conforme el Artículo 128 de la Constitución Política del Estado.

115. La Constitución Política del Estado en los Artículos 13 y 14 establece que los tratados y convenios internacionales sobre Derechos Humanos prevalecen y mantienen su vigencia y ejercicio aún en estados de excepción, así como establece en los Artículos 8 y 9 que el Estado boliviano propugna entre sus valores y fines la igualdad de oportunidades y la construcción de una sociedad justa, de la misma forma que establece el Artículo 21 numeral 2) de la Declaración Universal de Derechos Humanos. En ese contexto el respeto y sujeción a la carrera judicial, dispuesta por la Constitución Política y la ley buscan precautelar y garantizar ambos bienes, siendo que por el contrario su desconocimiento implica un acto arbitrario, injusto y atentatorio al derecho de otras personas.

116. El Consejo de la Judicatura señaló que la decisión tomada es absolutamente compatible con las normas internacionales de protección de los Derechos Humanos, porque ha reivindicado para la sociedad boliviana, el derecho de contar con los mejores jueces, luego de someterse a todas las fases que conforman el Sistema de Ingreso a la carrera judicial. Finalmente, conforme al artículo 178 de la Constitución Política del Estado, *que*

*dispone que se constituyen en garantía de la independencia judicial, el desempeño de los jueces de acuerdo a la Carrera Judicial y la autonomía presupuestaria de los órganos Judiciales, la Ley del Consejo de la Judicatura, Ley N° 1817, incorpora y regula el sistema de la carrera judicial, compuesto por diferentes mecanismos que debidamente cumplidos y ejecutados constituyen una garantía de estabilidad e inamovilidad para todo funcionario judicial.*

### **Comentarios y observaciones de la Relatora Especial**

117. La Relatora Especial agradece la vasta respuesta brindada por el Gobierno de Bolivia a la comunicación enviada el 27 de mayo de 2010 y en particular, el informe transmitido por el Ministerio de Justicia, el Viceministerio de Justicia y Derechos Fundamentales, la Dirección General de Justicia y Derechos Fundamentales y la Profesional Especializada ADF.

118. Sin embargo, quisiera recordar que, a la luz de los Principios básicos relativos a la independencia de la judicatura, específicamente los numerales 11 y 12, los jueces deberán tener garantizada la permanencia en su cargo por los periodos establecidos, así como su independencia y seguridad; igualmente, deberá serles garantizada su inamovilidad, tanto a los nombrados mediante decisión administrativa como a los elegidos.

119. E tal sentido, llama la atención de la Relatora, el hecho de que los 22 vocales de segunda instancia, hubieran sido nombrados como jueces desde hace más de diez años, y que no haya sido sino en fecha reciente, cuando su nombramiento hubiera sido considerado como irregular por parte del Estado. Sorprende que, aún cuando los 22 jueces se hubieran visto beneficiados en 2007 por el Amparo Constitucional que declaró nula la convocatoria que pretendía sujetarlos a la realización de un examen, y por ende, tuvieran garantizada su inamovilidad, el Consejo de la Magistratura haya decidido emitir en 2010, un Acuerdo ordenando la separación de su cargo. Llama la atención de la Relatora el hecho de que, una decisión judicial tomada en última instancia y, reconocida por el propio Estado como acción extraordinaria y subsidiaria de protección de derechos conforme al propio texto Constitucional, no haya sido tenida en cuenta, pues ello contraviene además el principio general básico de cosa juzgada y afecta la independencia judicial.

120. Sumado a lo anterior, la Relatora considera conveniente recordar que, tratándose de la suspensión o separación del cargo de un juez, ésta debe tener origen en la incapacidad o comportamiento que lo inhabilite para continuar desempeñándose como tal; la decisión de separación tiene que ser llevada a cabo a la luz de un procedimiento cuya decisión final debería estar sujeta a revisión independiente. En el caso, dichos supuestos parecen no haber tenido lugar. Finalmente, sorprende el hecho de que tras la separación del cargo de los 22 vocales, las cerraduras de sus juzgados hubieran sido cambiadas y sus ordenadores y discos duros revisados.

121. La Relatora Especial quisiera subrayar la importancia de que el Estado garantice la independencia del poder judicial, el respeto a las decisiones judiciales tomadas conforme a derecho, así como la estabilidad de los operarios de justicia.

### **Comunicación enviada**

122. El 7 de junio de 2010, Relatora Especial sobre la independencia de magistrados y abogados, junto con el Grupo de Trabajo sobre la Detención Arbitraria, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida con respecto al arresto del Sr. Juan Urabo Pereira Olmos y del Sr. Alex Peter Pardo Paniagua.

123. De acuerdo con las informaciones recibidas, el Dr. Juan Urabo Pereira Olmos - antiguo Presidente de la Asociación de Magistrados y actual vocal (y antiguo Presidente) de



la Corte Superior de Distrito de la Provincia de Pando - y el co-juez en dicha Corte Superior, abogado Alex Peter Pardo Paniagua, habrían sido arrestados el 21 de mayo de 2010 en la ciudad de Cobija en momentos en que ingresaban al Tribunal, por miembros de la Policía. Horas después habrían sido conducidos en un vuelo de Boliviana de Aviación a la ciudad de La Paz, y habrían sido detenidos en los locales de la Fuerza Especial de Lucha Contra el Crimen (FELCC).

124. Según la información recibida, la razón de su detención estaría motivada en haber aceptado, en ejercicio de sus funciones de jurisdicción constitucional, un amparo constitucional ordenando el traslado a El Porvenir, desde La Paz, del expediente del caso del enfrentamiento del 11 de septiembre de 2008, durante el cual se produjo la muerte de 13 personas y un número indeterminado de heridos y de desaparecidos.

125. Asimismo se informa que estas detenciones - motivadas por resoluciones judiciales adoptadas en el marco de actividades jurisdiccionales - habrían creado una situación de grave preocupación en la Judicatura boliviana, ya alarmada por el anuncio de la destitución, el pasado 17 de mayo, de 22 Magistrados de segunda instancia, que se habrían producido sin las debidas garantías judiciales y en clara contravención de los principios generales básicos del derecho y de las garantías del debido proceso de ley.

126. Según la información recibida, el Sr. Pereira Olmos habría sido puesto en libertad en la mañana del día 22 de Mayo, mientras que el Sr. Pardo Paniagua habría sido formalmente acusado de prevaricación y de haber tomado decisiones ilegales.

127. Se expresó preocupación por el hecho de que estas detenciones, denuncias y acusas por prevaricación en caso de fallos y resoluciones adoptadas en el marco de actividades jurisdiccionales, afectan la independencia del Poder Judicial en Bolivia y pueden afectar la independencia e imparcialidad de sus jueces.

#### **Comunicación recibida**

128. En una carta fechada el 12 de agosto de 2010, el Gobierno respondió al llamamiento urgente con fecha de 07 de junio de 2010.

129. De acuerdo al Informe emitido por el Ministerio Público, en fecha 21 de mayo de 2010, la Fiscalía de Distrito de Pando procedió a la detención de los Sres. Juan Pereira Olmos, Peter Alex Pardo Paniagua y otro, en cumplimiento a la solicitud de cooperación emitida por la Fiscal de Materia asignada al Caso, posteriormente fueron trasladados a la ciudad de La Paz a través de una línea aérea comercial, realizó el acompañamiento un Oficial Investigador del Ministerio Público de Pando. En la ciudad de la Paz, los tres detenidos fueron entregados a las autoridades departamentales a horas 20:30 bajo acta de recepción de detenidos signada el día viernes 21 de mayo de 2010 suscrita por el Oficial Investigador y la Fiscal asignada al caso.

130. Es evidente que los Sres. Juan Pereira Olmos y Peter Alex Pardo Paniagua fueron detenidos en el departamento de Pando y puestos ante autoridad competente en la ciudad de la Paz, habiéndose cumplido ordenes de detención por no haber comparecido a una citación para prestar su declaración conforme a lo previsto por ley (artículo 224 del Código de Procedimiento Penal), que fue recibida en dicha ciudad al haberse en ella efectuado la denuncia.

131. Los Sres. Alex Peter Pardo Paniagua y Juan Pablo Urabo Pereira Olmos fueron detenidos debido a que los mismos no comparecieron a prestar su declaración Informativa por lo que en fecha 8 de enero de 2010 el Fiscal de Distrito de la Paz, en el marco de lo dispuesto en el artículo 136 del Código de Procedimiento Penal, solicitó cooperación directa dentro del Proceso Penal seguido por el Ministerio Público contra los Sres. Alex Peter Pardo Paniagua y Juan Urabo Pereira Olmos por los supuestos delitos de

Resoluciones Contrarias a la Constitución y las leyes y Otros a la Fiscalía de Distrito de Pando para la detención de estas personas.

132. Consta en las citaciones diligenciadas que, el Sr. Alex Peter Pardo Paniagua sería notificado a las 17:25 hrs. del 19 de enero de 2010 para presentar su declaración a las 15 hrs. del viernes 29 de enero de 2010. Y que el Sr. Juan Urabo Pereira Olmos sería notificado a las 9:15 del 20 de enero de 2010 para presentar su declaración a las 9:00 hrs del viernes 29 de enero de 2010. Las notificaciones con firma de recibido de las personas citadas en documento original se encuentra en el Cuaderno de Investigaciones a cargo de la Fiscal Asignada al caso.

133. Debido a que las personas citadas no se presentaron a prestar su declaración informativa, la Fiscal adscrita al caso dictó la Resolución Fundamentada de Aprehensión de fecha 11 de mayo de 2010, motivo por el cual se realizó la detención en cumplimiento a la Orden de Aprehensión del ciudadano Peter Alex Pardo Paniagua de fecha 11 de mayo de 2010 y la Orden de aprehensión del ciudadano Juan Urabo Pereira Olmos de fecha 11 de mayo de 2010, ambas órdenes emitidas por la Fiscal asignada al caso de la ciudad de La Paz.

134. Las mismas fueron emitidas dentro de la etapa de investigación por el delito de resoluciones contrarias a la Constitución y las Leyes y Prevaricato, caso signado con el N° LPZ0907046, seguido por el L.G.C.M. contra los detenidos y otras 3 personas.

135. La Fiscal, emitió Resolución y Orden de aprehensión en cumplimiento a lo establecido en el artículo 224 y 227 de la Ley N° 1970 de 25 de marzo de 1999, código de Procedimiento Penal, artículo 14 de la Ley N° 2175 y la línea jurisprudencial sentada con las Sentencias Constitucionales Nos 284/02-R y 0327/04-R, las mismas que establecen que la aprehensión es legal en caso de desobediencia a la orden de citación del Fiscal.

136. Esta orden, fue cumplida por la Fiscalía de Distrito y la Fuerza Especial de Lucha Contra el Crimen de Pando. De acuerdo al Informe de fecha 22 de julio de 2010, presentado por la Fiscal asignada al caso, no se tiene conocimiento de quejas instauradas en Instancias judiciales internas sobre la detención de los Sres. Alex Peter pardo Paniagua y Juan Pablo Urabo Pereira Olmos.

137. La Fiscal emitió Resolución de Imputación Formal contra el Sr. Alex Peter Pardo Paniagua por haber encontrado suficientes elementos de convicción de su presunta participación en los delitos investigados, como se manifiesta en la Imputación Formal. El Sr. Pardo Paniagua cumple medidas sustitutivas a la detención preventiva. Respecto al Sr. Juan Urabo Pereira Olmos no existe Imputación Formal en su contra por lo que no existe interposición de medidas restrictivas.

138. De acuerdo al informe presentado por el Ministerio Público, se realizó la Imputación Formal del Sr. Alex Pardo Paniagua, ello debido a que existen indicios suficientes de la comisión del delito de acuerdo a la investigación que se lleva a cabo en la Fiscalía de Distrito de la Paz por el delito de prevaricato y por dictar resoluciones contrarias a la Constitución y las Leyes.

139. La legislación boliviana dispone en el Código de Procedimiento Penal, Ley N° 1970 de 25 de marzo de 1999 que las etapas del Proceso constan de la Etapa Preparatoria, Juicio Oral y Público y Recursos, sin embargo la Sentencia Constitucional N° 1036/2002-R establece de forma mas específica las subetapas de la Etapa Preparatoria de la siguiente forma: Primera Fase, los actos iniciales de la investigación preliminar comienza con la denuncia, la querrela o con la noticia fehaciente que reciben las autoridades llamadas por ley (Fiscalía-Policía) sobre la comisión de un delito; Segunda Fase, el desarrollo de la etapa preparatoria, comienza con la imputación formal, representa el inicio del Proceso Penal; y la Tercera Fase, que se denomina conclusión de la etapa preparatoria y esta constituida por

los actos conclusivos entre los cuales se encuentra la presentación de la acusación formal por el Fiscal al Juez o presidente del Tribunal.

140. El proceso, actualmente se encuentra en esta etapa procesal, en la segunda fase, por los indicios sobre la participación del Sr. Peter Alex Pardo Paniagua en el hecho se emitió resolución de Imputación Formal de fecha 22 de mayo de 2010. Con la imputación formal empieza la etapa preparatoria, que puede durar seis meses, al cabo de los cuales debe concluir con una de las formas establecidas en el artículo 323 del Código de Procedimiento Penal, las mismas son: 1. Acusación Formal, si se estima que la investigación proporciona fundamento para el enjuiciamiento público del acusado; 2. Suspensión Condicional del Proceso, la aplicación de procedimiento abreviado, aplicación de un criterio de oportunidad o la promoción de la conciliación; 3. Sobreseimiento, cuando resulte evidente que el hecho no constituye delito o cuando se estime que los elementos de prueba no son suficientes para fundamentar la acusación.

141. Al momento de la aprehensión practicada en contra de los Sres. Juan Pereira Olmos y Peter Alex Pardo Paniagua, se respetaron sus derechos y garantías establecidos en la Constitución Política del Estado y los Instrumentos Internacionales de derechos humanos. Conforme a lo establecido en la Constitución Política del Estado y el Pacto Internacional de Derechos Civiles y Políticos los Sres. Juan Pereira Olmos y Peter Alex Pardo Paniagua fueron detenidos siguiendo el procedimiento establecido en la normativa legal interna vigente y dentro de un proceso penal.

142. Por otra parte, de acuerdo al informe de la Fiscalía Especializada de Persecución de Delitos de Corrupción (FEPDC) de Pando los Sres. Juan Pereira Olmos y Peter Alex Pardo Paniagua, durante su estancia en Pando no ingresaron a celdas policiales, no fueron esposados, permanecieron en el Despacho del Director Departamental de la Fuerza Especial de Lucha Contra el Crimen (FELCC) hasta que fueron trasladados a la ciudad de La Paz donde fueron entregados a las autoridades departamentales (Fiscal e Investigador asignados al caso) en dependencias de la FELC.

### **Comentarios y observaciones de la Relatora Especial**

143. La Relatora Especial agradece la respuesta del Gobierno de Bolivia a la comunicación enviada el 7 de junio de 2010 y en particular, el informe transmitido por el Ministerio de Justicia, el Viceministerio de Justicia y Derechos Fundamentales, la Dirección General de Justicia y Derechos Fundamentales y el Área de Derechos Fundamentales.

144. Sin embargo, la Relatora considera importante recordar que, conforme a los principios básicos relativos a la independencia de la Judicatura, todas las acusaciones o quejas que sean formuladas contra un juez, como consecuencia de su actuación judicial y profesional, tienen que ser tramitadas con prontitud e imparcialidad con arreglo al procedimiento pertinente. Además, el examen de la cuestión, al menos en la etapa inicial, debería ser confidencial, salvo petición expresa del juez en cuestión, situación que al parecer, no se materializó en el presente caso, sobre todo, cuando ambas personas fueran detenidas en la entrada del recinto judicial en el cual se desempeñaban como vocales.

145. Aunado a ello, la Relatora hace notar el hecho de que la detención de los dos jueces hubiera tenido lugar en la misma semana, justo 4 días después, de la separación del cargo de otros 22 magistrados; estos episodios vividos en Bolivia, despiertan una profunda preocupación por la independencia y estabilidad de algunos miembros de la judicatura.

### **Comunicación enviada**

146. El 29 de de junio de 2010, la Relatora Especial sobre la independencia de magistrados y abogados, envió un llamamiento urgente señalando a la atención urgente del

Gobierno la información recibida en relación con el **Juez Octavo de Instancia en lo Penal de Santa Cruz de la Sierra**, Sr. Luis Fernando Tapia Pachi.

147. De acuerdo a la información recibida, el Juez Tapia Pachi habría sido objeto de acusaciones penales, incluyendo una orden de aprehensión librada contra él, por haber aplicado los principios de juez natural y prevención en una causa de presunto terrorismo conocida como la causa del Hotel Las Américas.

148. El Juez Tapia Pachi se habría limitado, en ejercicio pleno de su función jurisdiccional y en aplicación de los principios generales de derecho procesal penal antes señalados, a considerar que la causa mencionada debía estar sujeta a la jurisdicción de los tribunales de Santa Cruz de la Sierra, por ser el lugar donde ocurrieron los hechos y donde residen los implicados. Sin embargo, el caso habría sido llevado a la ciudad de La Paz donde se habría decidido acusar formalmente al Juez Tapia Pachi por los delitos de prevaricato, incumplimiento de deberes y de emisión de resoluciones contrarias a la Constitución y a las leyes.

149. Además, el Juez Tapia Pachi se encontraría también bajo una orden de aprehensión por no haberse presentado a una audiencia de excepción de incompetencia que él habría presentado contra el Juez Noveno de Instrucción en lo Penal de La Paz, reclamando jurisdicción.

150. Se expresó preocupación por el hecho de que estos actos de denuncias y acusaciones por prevaricación y otros supuestos crímenes en caso de fallos y resoluciones adoptadas en el marco de actividades jurisdiccionales, puedan constituir ataques de tipo intimidatorio y menoscabar la independencia de la judicatura. También se expresó preocupación por el hecho que este tipo de actos contra jueces Bolivianos no parecen ser hechos aislados.

#### **Comunicación recibida**

151. En una carta fechada el 12 de agosto de 2010, el Gobierno respondió al llamamiento urgente con fecha de 29 de junio de 2010.

152. Las alegaciones presentadas en el comunicado de la Relatoría Especial no son ciertas, toda vez que la orden de aprehensión librada en contra del Juez Tapia Pachi no se fundamenta en la aplicación de los principios de juez natural y prevención en la causa sustanciada por terrorismo, más por el contrario, conforme la denuncia y la imputación formal presentada por el Fiscal de Materia Anticorrupción, la orden de aprehensión se origina en que:

153. En fecha 21 de mayo de 2009 el Juez Tapia Pachi emitió el Auto Interlocutorio N° 125/2009 en el cual consta la admisión de una solicitud de acumulación e inhibitoria presentada por el señor B.G.M.J, dentro del proceso seguido por el Ministerio Público en contra de presuntos autores por los delitos de terrorismo, sin que dicha persona este legitimada activamente por no tener la calidad de víctima, y sindicado en el proceso conforme lo previsto por el artículo 308 del Código de Procedimiento Penal vigente, declarándose competente para ejercer el control jurisdiccional dentro de la investigación que sigue el Ministerio Público por terrorismo, sustanciada ante el Juez de Instrucción Cautelar en lo Penal del Distrito de La Paz.

154. La admisión de la inhibitoria representa que un tercero que no fue mencionado, ni relacionado en el caso FELCC-SCZ0902862 instaurado a denuncia de S.A.C., tenga la posibilidad de intervenir en la tramitación del proceso, situación que atenta gravemente a las disposiciones del ordenamiento jurídico interno y específicamente a lo establecido por el Código de Procedimiento Penal, configurándose en un indicio de la comisión de los delitos de Resoluciones contrarias a la Constitución y a las Leyes (Artículo 153 Código

Penal), Incumplimiento de Deberes, (Artículo 154), Impedir o estorbar el ejercicio de funciones (Artículo 161) y Prevaricato (Artículo 173).

155. La denuncia planteada en contra del Juez Tapia Pachi, además señala que al admitirse la acumulación e inhibitoria, se habría vulnerado la normas establecidas de la función judicial afectando los intereses de la colectividad, cuyo único objetivo fue la paralización de una investigación de carácter nacional en contra de presuntos actores de terrorismo, investigación originada en los hechos sucedidos en el Hotel las Américas el 16 de abril de 2009, cuando se habría desarticulado a un grupo de presuntos terroristas, situación que además configuraría el tipo penal de uso indebido de influencias (Artículo 146 Código Penal).

156. El caso del Juez Tapia Pachi fue originado a partir de una denuncia en su contra presentada por representantes del Ministerio de Gobierno en fecha 25 de agosto de 2009. A partir de dicha denuncia y debido a la orden de aprehensión de fecha 7 de septiembre de 2009, emitida por el Fiscal asignado al caso el Juez Tapia Pachi presentó ante la Corte Superior de Distrito un recurso de acción de libertad, conforme lo establecido en los Artículos 125 y 126 de la Constitución Política del Estado, acción que fue resuelta en fecha 11 de septiembre de 2009, declarándose procedente la misma y dejando sin efecto la citación emitida por el fiscal asignado al caso de esa fecha.

157. El señor Tapia Pachi no compareció debidamente ni justificó impedimento legítimo en las audiencias de declaración informativa citadas, más al contrario obstaculizó el proceso de investigación al haber presentado en dos ocasiones memoriales de recusación ante la Fiscalía de Distrito de La Paz, las mismas que fueron desestimadas mediante las Resoluciones N° 1050/09 y N° 1152/09 de fechas 2 de octubre y 26 de octubre respectivamente.

158. En ese sentido, tras haber sido citado el 8 de septiembre de 2009 y el 19 de octubre de 2009 para presentar su declaración informativa y debido a su inasistencia injustificada, el fiscal asignado al caso emitió la resolución de aprehensión de fecha 7 de diciembre de 2009 de conformidad al Artículo 224 de la ley 1970 que establece “*si el imputado citado no se presentara en el término que se le fije, ni justificara un impedimento legítimo, la autoridad competente libraré mandamiento de aprehensión*”. La resolución de aprehensión del caso, establece además que de acuerdo a la Sentencia Constitucional SC 1080/2004-r “*(...) el sistema procesal vigente, concretamente, el Art. 97 del CPP, exige que en la etapa preparatoria el denunciado presentará declaración ante el fiscal, previa citación formal, disposición legal que es de inexcusable cumplimiento, en cuya virtud, el Fiscal como Director de la investigación, debe disponer la citación personal del imputado a objeto de asegurar de que este tome conocimiento de la denuncia que pesa en su contra, a fin de garantizar su derecho a la defensa y solo en el caso de que citado no se presentare en el término que se le fije, ni justificará un impedimento legítimos, el Fiscal podrá librar mandamiento de aprehensión de acuerdo a lo dispuesto por el Art. 224 del CPP, caso contrario, la aprehensión ordenada resulta ilegal*”.

159. Asimismo en fecha 20 de julio del presente año, el Concejo de la Magistratura suspendió al Juez de sus funciones, argumentando abandono de funciones, en aplicación del Artículo 44 del Reglamento del Sistema de Carrera Judicial. A la fecha, el señor Tapia Pachi se encuentra prófugo de la justicia.

160. La imputación formal presentada en contra del señor Tapia Pachi, se baso en el Código Penal vigente que establece en el artículo 173 el delito de prevaricato señalando: *(...) El Juez que en el ejercicio de sus funciones dictare resoluciones manifiestamente contrarias a la ley será sancionado con reclusión de dos años a cuatro años. Si como resultado del prevaricato en proceso penal se condenare a una persona inocente, se le*

*impusiere pena más grave que la justificable o se aplicara ilegalmente la detención preventiva, la pena será de reclusión de tres a ocho años.*

161. Asimismo, la imputación formal se fundamenta en el artículo 153 (Resoluciones contrarias a la Constitución y a las leyes) del Código Penal que señala *el funcionario público o autoridad que dictare resoluciones u ordenes contrarias a la Constitución o a las leyes o ejecutare o hiciere ejecutar dichas resoluciones y órdenes, incurrirá en reclusión de un mes a dos años*. De acuerdo a la imputación formal de fecha 12 de mayo de 2010, el accionar del Juez Tapia Pachi al admitir la solicitud de una persona que no es parte del proceso y disponer en una resolución la admisión al pedido de inhibitoria y acumulación, sin que dicha persona se encuentra legitimada, declarándose competente para ejercer el control jurisdiccional dentro de un caso que se encuentra bajo control jurisdiccional de un Juez de Instrucción cautelar en el Distrito Judicial de La Paz y favoreciendo con este accionar a los intereses del ciudadano Marinkovic, representan acciones atentatorias contra el orden jurídico legalmente establecido.

162. Asimismo se establece que las únicas formas de aperturar una investigación en materia penal, de acuerdo al Código del Procedimiento Penal vigente son 1) la presentación de una denuncia, 2) la presentación de una querrela penal y 3) la existencia de un acta de intervención directa evacuada por la policía boliviana, motivo por el cual es incorrecto considerar que un tercero que jamás ha sido mencionado en ese proceso, tenga la posibilidad de intervenir dentro de la tramitación del proceso.

#### **Comentarios y observaciones de la Relatora Especial**

163. La Relatora Especial agradece la respuesta del Gobierno de Bolivia a la comunicación enviada el 29 de junio de 2010 y en particular, el informe transmitido por el Ministerio de Justicia, el Viceministerio de Justicia y Derechos Fundamentales, la Dirección General de Justicia y Derechos Fundamentales y el Área de Derechos Fundamentales.

164. Sin embargo, en el presente caso, la Relatora Especial lamenta que haya sido una decisión judicial interlocutoria que solo admitía la solicitud de un trámite a proceso, lo que generara la denuncia y posterior orden de aprehensión en contra del Sr. Tapia Pachi. Por una parte, dicha resolución interlocutoria, habría sido tomada en ejercicio de sus funciones como operador judicial, por tanto, la misma podría haber sido objetada vía jurisdiccional por los interesados en el procedimiento principal, además que, al tratarse de una interlocutoria ni se decidía la suerte del juicio principal, ni se trataba de algo que no fuera susceptible de recurrirse en una instancia superior. Por ello, sorprende que la decisión de Tapia no solo no fuera objetada, sino que, directamente fuera considerada materia de una denuncia penal por parte del poder ejecutivo, a través de la denuncia formulada por la representación legal del Ministerio de Gobierno.

165. Además, sorprende a la Relatora que aún cuando la orden de aprehensión de 7 de septiembre de 2009 en contra de Tapia Pachi, hubiera quedado sin efectos en virtud del recurso de acción de libertad declarado en su favor. Tapia Pachi, nuevamente fuera citado el 8 de septiembre y 19 de octubre de 2009 para rendir declaración informativa, y que, dada su inasistencia, el 7 de diciembre de 2009 se hubiera vuelto a emitir una orden de aprehensión en su contra. Preocupa que, finalmente el 12 de mayo de 2010, se insistiera en señalar como motivo de imputación penal en contra de Tapia Pachi, la resolución de admisión de una petición en un proceso judicial; y que finalmente, el 20 de julio de 2010, el Consejo de la Magistratura decidiera suspender a Tapia Pachi, aduciendo el abandono de sus funciones.

166. La Relatora reitera que la independencia y seguridad de los jueces debe ser garantizada por el Estado, en tal sentido, considera de suma importancia subrayar el

contenido de los principios 1, 2, 3, 4 y 6 del Conjunto de Principios básicos relativos a la independencia de la judicatura. Ello, con la finalidad de resaltar la obligación de todas las instituciones gubernamentales y de otra índole, de respetar, acatar y garantizar la independencia de la judicatura; así como evitar las presiones, amenazas e intromisiones – directas o indirectas— o injustificadas en los procesos judiciales.

## **Cambodia**

### **Communication sent**

167. On 14 September 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation on human rights defenders, sent an urgent appeal to the Government regarding the situation of Mr. **Leang Sokchouen**, Mr. **Tach Vannak**, Mr. **Tach Le** and Mr. **Tach Khong Phoung**. Mr. Leang Sokchouen is a staff member of the local human rights NGO LICADHO working to protect human rights in Cambodia and to promote respect for civil and political rights by the Cambodian Government and institutions.

168. According to the information received, on 30 August 2010, Mr. Leang Sokchouen, Mr. Tach Vannak and Mr. Tach Le were sentenced to two years in prison and a two million riels fine (approximately US\$ 500). Another defendant, Mr. Tach Khong Phoung, was tried *in absentia* and sentenced to three years imprisonment.

169. Mr. Leang Sokchouen and others were reportedly accused of distributing anti-Government fliers in Takeo Province on 4 January 2010. Mr. Sokchouen was a longtime acquaintance of co-defendant Mr. Tach Khong Phoung but, according to reports received, he has consistently testified that he had no knowledge of the flier incident.

170. It has come to the attention of the Special Rapporteurs that the trial on 30 August was marked by a number of deficiencies that would indicate that the defendants did not enjoy a fair trial. According to the information received, Mr. Sokchouen was arrested without prior notice early on a Saturday morning and was held incommunicado for more than 33 hours. During this time, he was reportedly detained inside the Ministry of Interior's National Police Headquarters without access to a lawyer; a violation of Article 98 of the Cambodian Code of Criminal Procedure.

171. It has been alleged that the official investigation report did not confirm that the police arrested the correct man since investigators identified the suspect in the alleged phone calls as "Mr. L. Sokly," a Vietnamese national living in Phnom Penh's Russei Keo district. Mr. Sokchouen is a Khmer national living in the Sen Sok district.

172. Furthermore, one of the defendants, Mr. Tach Vannak, who had initially claimed during his detention at the Ministry of Interior's National Police that Leang Sokchouen had been involved in distributing the fliers, allegedly retracted part of his earlier statement during the hearing stating that he only implicated Mr. Sokchouen because of false promises made by police interrogators. He claimed police promised him that he would be allowed to go back to his family in exchange for his cooperation. However, the judge reportedly ignored the retraction. The defendant also claimed that there was police misconduct, yet the judge allegedly ignored what was said in his courtroom and instead relied on police paperwork.

173. According to the information received, the evidence provided by the police against Mr. Sokchouen consisted of a list of phone numbers claiming Mr. Sokchouen and Mr. Tach Khong Phoung had called each other. Furthermore, the judge reportedly relied entirely on written statements and four alleged witness statements from police officers, all of which

were produced by the prosecutor. It has been reported that none of these individuals were called to court by the investigating judge or cross-examined by the defence.

174. During the trial, the judge reportedly stated that in-court testimonies by the three accused “could not be trusted” and based his decision entirely upon the police report and interrogation. Article 118 of the Cambodian Code of Criminal Procedure states that police reports can be used for “information only,” but that they may also be considered as evidence if they are not “proven false.” According to the information received, despite strong evidence that the police report was false, the judge did reportedly not evaluate its veracity.

175. According to reports received, the Court did not examine whether the distribution of the leaflets constituted a crime in the first place. During the hearing, there was allegedly only marginal examination of whether the leaflets and their dissemination constituted the crime of “disinformation” under article 62 of the UNTAC penal provisions which defines it as the “publication or dissemination of false information in bad faith with malicious intent, which has disturbed or is likely to disturb public peace”.

176. In his justification, the Prosecutor reportedly stated that the leaflets constituted criticism to Cambodia’s leadership and that they could have caused social unrest. In the announcement of the verdict, the trial judge did not provide any further elaboration on this argument. According to the information received, Mr. Leang Sokchouen has lodged an appeal to the verdict.

177. Concern was expressed about the situation of Mr. Leang Sokchouen, Mr. Tach Vannak, Mr. Tach Le and Mr. Tach Khong Phoung and the allegations that the conviction of Mr. Leang Sokchouen and the three other defendants may constitute a violation of the right to freedom of expression and the right to a fair trial. In addition, concern was expressed that the prosecution of Mr. Leang Sokchouen, a human rights defender, on the basis of alleged questionable evidence may have an adverse impact on the working climate for human rights defenders in the country.

#### **Communication received**

178. No response has been received to date.

#### **Comments and observations of the Special Rapporteur**

179. The Special Rapporteur regrets the present report was finalized, the Government has not responded to the communication dated 14 September 2010. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and calls upon the Government of Cambodia to provide details about the issues raised in the aforementioned communication at the earliest possible date.

### **China (People’s Republic of)**

#### **Communication sent**

180. On 27 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding **Mr. Tang Jitian** and **Mr. Lui Wei** who were facing the possibility of revocation of their lawyer’s license. Mr. Jitian was the subject of a previous joint urgent appeal sent by the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers on 10 June 2009, and of a joint allegation letter sent by the Special Rapporteur 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 independence of judges and lawyers on 7 November 2008.

181. According to information received, on 12 April 2010, Mr. Tang Jitian and Mr. Lui Wei received a notification from the Beijing Municipal Judicial Bureau that a complaint concerning their conduct had been submitted by the Luzhou City People's Intermediate Court in Sichuan Province. The two lawyers were later charged with "disrupting courtroom order and interfering with the regular litigation process" and are facing the possibility of revocation of their lawyer's license.

182. The charge emanated from a case in which the two lawyers were retained as counsel to represent a Falun Gong practitioner in April 2009. Their client had been charged with the offence of "using an evil cult to destroy implementation of the law".

183. At the hearing convened on 22 April 2010, the Beijing Municipal Judicial Bureau presented evidence that the lawyers disrupted court procedure during the trial in April 2009, by disobeying the presiding judge's instructions prohibiting them from presenting a description of Falun Gong that contravened the official designation of it being an "evil cult", and defended its legitimacy. The Special Rapporteurs were informed that no decision had been taken with regard to the hearing.

184. The Special Rapporteurs were also informed that there was increased interference with regard to lawyer's discharge of their professional functions through harassment. Lawyers who represent clients in cases relating to religious and ethnic minorities and human rights defenders were said to be threatened with closure of their legal practices and revocation of their licenses.

#### **Communication received**

185. In a letter dated 5 July 2010, the Government responded to the communication sent on 27 April 2010 but at the time the present report was finalized the reply of the Government had not been translated.

#### **Communication sent**

186. On 26 August 2010, the Special Rapporteur sent a joint allegation letter 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 **Mr. Guo Xiaojun**, a Falun Gong practitioner from Shanghai.

187. Mr. Guo Xiaojun is a 40-year-old resident in Room 504, N° 1 Lane 880 Cangyuan road, Minhang District, Shanghai. He started practicing Falun Gong in 1997. Guo Xiaojun worked formerly as a lecturer in the Computer Science Department of Shanghai Jiaotong University, however, he was dismissed in 2001 after his arrest and conviction for having distributed literature about Falun Gong. On 16 December 2004, Guo Xiaojun was released from a labour camp.

188. On 7 January 2010, Guo Xiaojun was re-arrested by the police of the Domestic Security Division, Baoshan District Public Security Bureau. Several policemen searched his home and confiscated his laptop computer, mobile phone, books and other personal belongings. Guo Xiaojun has since been detained in the Shanghai Baoshan District Detention Center.

189. On 18 January 2010, the director of the Domestic Security Division, Mr. Qiu Feng, and another policeman whose family name is Peng took Guo Xiaojun into a special interrogation room in the Baoshan District Detention Center and interrogated him from 2:15 p.m. to 5:00 p.m. Subsequently, Guo Xiaojun was taken into another special interrogation room in the Detention Center and was interrogated non-stop by a team of

policemen lead by Qiu Feng from 5:45 p.m. on 18 January 2010 to 2:30 p.m. the following day without being allowed to sleep. The police allegedly forced him to confess through sleep deprivation and by refusing to provide him with food. When Guo Xiaojun tried to support his head with his hands, Qiu Feng violently pushed away his hands. Furthermore, the police reportedly threatened to arrest his wife Xu Wenxin, who is also a Falun Gong practitioner, and to send their young child back to his hometown if Guo Xiaojun did not confess.

190. In February 2010, his defense attorney, Mr. Liang Xiaojun, terminated the contract with Guo Xiaojun under the threats of the Beijing Judicial Bureau. One official of the Beijing Judicial Bureau had reportedly warned Liang Xiaojun that he could no longer practice as a lawyer if he continued to represent Guo Xiaojun.

191. On 6 July 2010, the Shanghai Baoshan District Court tried Guo Xiaojun and sentenced him to four years' imprisonment. The basis of the conviction was Guo Xiaojun's confession obtained through threats and ill-treatment. Guo Xiaojun declared he would retract his confession and said that this confession was obtained through threats and torture, however, his speech was cut short by the judge. Guo Xiaojun has appealed against the court verdict. His wife also filed complaints with the police, the court and prosecutors, however, the authorities have reportedly not responded to those complaints.

#### **Communication received**

192. No response has been received to this communication.

#### **Communication sent**

193. On 9 November 2010, the Special Rapporteur, together with The Chair-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 torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the situation of **Mr. Dhondup Wangchen**, also known as Dunzhu Wangqing and Dangzhi Xiangqian, co-director of the documentary film "Leaving Fear Behind".

194. According to the information received, from October 2007 to March 2008, Mr. Dhondup Wangchen interviewed about a hundred Tibetans living in the Tibetan Autonomous region, and made a film based on these interviews, without official authorization from the authorities. The documentary was later smuggled abroad where it was edited and shared with foreign journalists during the 2008 Beijing Olympic Games.

195. On 26 March 2008, Mr. Dhondup Wangchen was arrested in Tongde county, near Xining, in connection to riots which broke out in Lhasa and Tibetan-populated regions of China. He was first detained at the Ershilibu detention center in Xining, then transferred to a Government-run guesthouse nearby, possibly for interrogation, and finally taken to the No. 1 Detention Center in Xining. On 12 July 2008, while held in the guesthouse, he briefly ran away and told an acquaintance that one of his hands became numb due to severe torture. In addition, it was reported that he had been suffering from hepatitis B, and was denied access to adequate medical treatment.

196. In July 2009, Mr. Li Donyong, the lawyer chosen by Mr. Dhondup Wangchen was reportedly arbitrarily replaced by the judicial authorities in Xining with a Government-appointed lawyer, without providing any justification. Mr. Li Donyong was allowed to meet his client only once, in July 2009, who informed him that he had been severely tortured while in detention to extract a confession, and that he would plead not guilty during his trial.

197. On 28 December 2009, the provincial court in Xining sentenced Mr. Dhondup Wangchen to six years imprisonment. The trial was reportedly held in secret. The Chinese authorities reportedly did not inform Mr. Dhondup Wangchen's relatives about the trial, nor about the verdict.

198. According to information received, despite his fragile health condition, Mr. Dhondup Wangchen was forced to work 17 to 18 hours per day, sometimes during night shifts. He was also denied access to books sent to him in order to educate himself.

199. Mr. Jigme Gyatso, monk, co-director of the documentary was arrested during the same period, and was released on bail on 15 October 2008. He was reportedly tortured while in detention.

200. Serious concerns were expressed that the arrest and detention of Mr. Dhondup Wangchen and Mr. Jigme Gyatso, and the alleged acts of torture suffered in detention, are related to their peaceful activities in defence of human rights, while exercising their right to freedom of opinion and expression. Grave concerns were expressed for the physical and psychological integrity of Mr. Dhondup Wangchen who remains detained.

#### **Communication received**

201. In a letter dated 21 December 2010, the Government responded to the communication sent on 9 November 2010, but at the time this report was finalized, the reply of the Government had not been translated.

#### **Communication sent**

202. On 3 March 2011, the Special Rapporteur sent an urgent appeal together with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the **pattern of arrests, detentions, enforced disappearances and intimidations of human rights defenders and lawyers** across the country.

203. According to the information received, on 20 February 2011, calls for protests inspired by the so-called "Jasmine Revolution" were made through the Internet in at least eighteen cities across the country. In this context, a large number of human rights activists and lawyers have allegedly been interrogated, arrested, detained, subjected to intimidation by the authorities, many of whom have also forcibly disappeared over the last few days. In a number of cases, some lawyers and activists have allegedly been placed under surveillance and/or house arrest, and some of their personal belongings, in particular computers, have been confiscated after their homes had been searched.

204. The following cases have in particular been brought to the attention of the Special Rapporteurs. The summary below is divided into two parts. While the first part addresses individual cases according to the specific city where the alleged violations have taken place, the second part addresses in particular the cases of three lawyers named **Mr. Jiang Tianyong, Mr. Tang Titian and Mr. Teng Biao**, for whom there are also allegations of interference in the discharge of their professional duties.

I.

*Bangbu, in Anhui Province*

205. On 25 February 2011, **Mr. Qian Jin** has allegedly been taken by National Security Police in Bangbu City and escorted to his home on the following day, where his computer was reportedly confiscated. It is alleged that he was then taken again by the police. A source indicated on 28 February 2011, that Mr. Qian Jin has been detained in Nanjing City's Huaiyuan Psychiatric Hospital.

206. Moreover, the Special Rapporteurs have received information indicating that other activists based in the same province may have been harassed and questioned by the authorities. On 26 February 2011, police officers allegedly interrogated husband and wife **Mr. Zhang Lin** and **Ms. Fang Cao**. Reportedly, Mr. Zhang Lin was held in custody overnight and police officers searched the couple's home, confiscating three computers.

*Beijing (and surroundings)*

207. On 19 February 2011, it is alleged that **Mr. Gu Chuan**, a human rights activist, was taken away by the police and that his current fate and whereabouts are unknown. The police reportedly confiscated two computers, two cell phones and some books. His wife, **Ms. Li Xinai** has allegedly been placed under house arrest and cut off from the outside world.

208. On 19 February 2011, **Mr. Qi Zhiyong**, an activist who participated in the 1989 Tiananmen protests, was reportedly taken away by the police, while he was humming the song, "What a Beautiful Jasmine Blossom". Since then, his fate and whereabouts are unknown.

209. On the morning of 25 February 2011, human rights activist **Mr. Li Hai** was allegedly taken from his home outside Beijing by local police. It is further alleged that he returned home late in the evening, but was warned not to leave his home, go online, or attempt to contact anyone. On the following day, he reportedly sent a message to friends alerting them that he was being guarded by three men, and that if he turned his cell phone off it meant that there was trouble. Shortly after 3:00 p.m. on the same day, Mr. Li Hai's cell phone was allegedly switched off. While information suggests that he may have been taken away by the police, his current fate and whereabouts are unknown.

210. It is further alleged that since 25 February 2011, Beijing police have been rounding up petitioners to prevent disturbances during the "Two Meetings" of the National People's Congress and the National Committee of the Chinese People's Political Consultative Conference. On that day, about a dozen petitioners, including Jiangsu petitioner **Ms. Hao Xiuxia**, were reportedly taken to Jiujiangzhuang prison. On the morning of 27 February 2011, about 200 individuals, including Hubei petitioner **Mr. Zheng Daijing**, have allegedly been arrested and taken by police officers to Jiujiangzhuang prison.

211. Since 26 February 2011, **Ms. Jin Han**, wife of the imprisoned human rights activist Mr. Xie Fulin, has reportedly been placed under 24-hour surveillance.

*Chengdu, in Sichuan Province*

212. On 19 February 2011, **Mr. Chen Yunfei**, an activist, was detained at 11:00 p.m. and reportedly released the following day at 11:00 p.m.

213. On 19 February 2011, **Mr. Ran Yunfei**, a writer, blogger and activist aged 46, was allegedly detained for "subversion of state power" and his computer was confiscated after his home had been searched. Following this incident, it is reported that the police took him away and that his fate and whereabouts are currently unknown.

*Guiyang, in Guizhou Province*

214. On 18 February 2011, **Mr. Huang Yanming**, a human rights activist, was reportedly taken away by the police from his home and his fate and whereabouts are unknown.

*Guangzhou, in Guangdong Province*

215. On 20 February 2011 around noon, while Mr. **Liu Shihui** was waiting for a bus to People's Park, one of the places where protests were called for, five men allegedly placed a black hood over Mr. Liu Shihui's head, beat him with bamboo rods, kicked him and stabbed him in the legs, leaving him bleeding on the road. Despite his legs reportedly having been broken, he allegedly crawled back to home and called for help. Subsequently, friends took him to a hospital for treatment. It is further alleged that Mr. Shihui's computer was stolen from his home.

216. On 22 February 2011, **Mr. Tang Jingling**, human rights lawyer, and **Mr. Ye Du**, writer, were allegedly taken away by the police and their current fate and whereabouts are unknown.

*Harbin, in Heilongjiang Province*

217. It is further alleged that on 19 February 2011, **Ms. Liang Haiyi** was questioned by the police and placed into police custody together with her ex-husband, who was then released, while she remained in detention. It is further reported that she has been detained at the Harbin City Number Two Detention Centre on the suspicion of "subversion of state power" and the police allegedly reproached her to post "information from foreign websites regarding 'Jasmine Revolution' actions on domestic websites" such as *QQ*, the popular Chinese social networking site.

*Jieyang, in Guangdong Province*

218. On 26 February 2011, **Mr. Zheng Chuangtian** has been reportedly detained on the charges of "inciting subversion of state power" by Huilai County police. His home was allegedly searched and it is not clear whether personal belongings have been confiscated.

*Mianyang, in Sichuan Province*

219. On 19 February 2011, **Mr. Ding Mao**, student leader during the 1989 pro-democracy protests, aged 45, was allegedly taken from his home to a place of detention on charges of "inciting subversion of state power". Reportedly, he was twice imprisoned for his activism, first in 1989 and again in 1992, and spent a total of 10 years in jail.

*Qianjiang, in Hubei Province*

220. On 12 February 2011, **Mr. Yao Lifa**, an election expert, was reportedly forcibly taken away from his school by the school principal and several teachers. It is further alleged that his landline and his wife's mobile phone were both shut down shortly thereafter. He was reportedly released on 19 February 2011. However, it is alleged that he fell out of contact and that he was abducted on 20 February 2011. His fate and whereabouts are unknown.

*Shanghai*

221. On 19 February 2011, at 4:20 p.m., the home of **Mr. Feng Zhenghu**, a human rights activist, was reportedly searched. It is further alleged that Mr. Zhenghu was summoned by the police for sharing information and photos on the Internet of the police at Wangfujing

Street, and that his computer and printer were taken away. At 10:00 p.m., he was allegedly released.

*Suining, in Sichuan Province*

222. On 20 February 2011, at about 5:30 p.m., the home of **Mr. Chen Wei**, a human rights activist aged 42, was reportedly searched by a dozen policemen and personnel from the neighbourhood committee, who confiscated a computer, a USB drive and two hard drives. Two days later, he was allegedly detained on the charges of “inciting subversion of state power” at Suining City Detention Centre. Reportedly, Mr. Chen Wei has already served two prison terms in relation to his participation in the 1989 Tiananmen protests and in May 1992, he was arrested and sentenced to five years imprisonment for organizing a political party.

*Suizhou*

223. On 20 February 2011, the human rights activist Mr. Liu Feiyue reportedly received a phone call from state security officers, who wanted to question him. The following day, his website, *Civil Rights and Livelihood Watch*, was allegedly attacked.

*Taiyuan, Shanxi Province*

224. On 20 February 2011, **Mr. Deng Taiging**, an activist, was allegedly taken to the Yingze police substation.

*Tianshui Gansu Province*

225. On 21 February 2011, a labor activist and member of the China Democracy Party, **Mr. Yue Tianxiang**, was allegedly detained for one day. Reportedly, his home was searched by local security officers and his computer confiscated.

*Wuhan, in Hubei Province*

226. On 12 February 2011, **Mr. Hu Guohong** and **Ms. Chen Xue**, husband and wife, were reportedly not permitted to leave their home by state security agents standing outside their residence. It is further alleged that on 18 February 2011, the Director of the Bureau of Letters and Calls in Jiang'an District, visited the couple and asked them not to petition during the CPPCC and Party Congress sessions – the so-called “Two Congress” sessions – at the municipal, provincial, and state levels. When both refused, the Director of the Bureau reportedly said that there was nothing that she could do about the state security standing at their door. The couple is allegedly still not permitted to leave their home and was told that would remain under house arrest until the end of the Two Congress sessions.

227. On 19 February 2011, **Mr. Yang**, mathematics professor at Wuhan University was reportedly harassed by state security officers who threatened to detain him and confiscate his electric bicycle. It is alleged that he was not detained after he allowed the officers to take down information from his identification card.

228. On 20 February 2011, a person in charge of household registration has allegedly stood outside **Mr. Qin Yongmin**'s home all day. It is further alleged that about a dozen of state security officers have been stationed near the home of this pro-democracy and human rights activist.

229. On 20 February 2011, **Mr. Jiang Hansheng**, a member of the China Democracy Party was reportedly taken early in the day by a car sent by the state security office to Huangpi County and returned home late at night.

230. On 20 February 2011, **Mr. Chen Zhonghe**, a member of the China Democracy Party, and both human rights activists **Mr. Xiao Shichang** and **Zhang Junjie** fell out of contact, and their fate and whereabouts are unknown.

231. On 21 February 2011, the political activist **Mr. Ren Qiuguang** was reportedly forced to remain at home by state security officers. It is further alleged that he has been repeatedly locked up in psychiatric institutions and subjected to electric shocks, beating, and torture until his teeth fell out and his left leg was atrophied.

*Wuxi, in Jiangsu Province*

232. It is alleged that on 21 February 2011, **Mr. Hua Chunhui**, a rights defense activist aged 47, was taken by the police, charged the following day with “inciting subversion of state power” and detained at Duqiao police substation in Nanchang District. Mr. Hua Chunhui has been actively involved in civil society activities in recent years.

*Yichang*

233. On 20 February 2011, **Mr. Shi Yulin**, a human rights lawyer, was allegedly told by state security officers that he would not be able to go out.

*Yingcheng*

234. On 20 February 2011, **Mr. Du Daobin**, a writer and activist, was reportedly not permitted to leave his home by state security officers, who allegedly told him that they would interrogate him the following day.

*II.*

235. On 16 February 2011, the three lawyers **Mr. Tang Jitian**, **Mr. Teng Biao** and **Mr. Jiang Tianyong** reportedly attended a meeting from 12:00 a.m. to about 2:30 p.m. to discuss the continued house arrest of the prominent blind legal activist Mr. Chen Guangcheng, which several of their lawyer friends had allegedly been unable to attend due to police posted outside their residences, preventing them from leaving their home. Following the meeting, the three lawyers were allegedly targeted by the authorities. Each of the cases is summarised below.

236. a) Mr. Tang Jitian has been a lawyer in Beijing since 2007, and was registered in Yanji Jilin province. He has reportedly provided legal representation to Falungong practitioners, people affected by HIV/Aids and Hepatitis B, and was actively involved in 2008 in efforts to promote direct elections to the Beijing Bar Association and lawyers’ rights. In April 2010, it is reported that he was disbarred for his work allegedly in relation to a case involving a Falungong practitioner.

237. On 16 February 2011, at about 6:48 p.m., Mr. Tang Jitian was allegedly taken by the police from his home in Beijing to Changwai police station in Xuanwu district, located in the same city, in car number 6077. The police reportedly searched his house and confiscated some of his belongings.

238. On 19 February 2011, Mr. Tang Jitian’s ex wife reportedly came to Beijing from her hometown to request information from the police about him without success and was escorted by the police back to Jilin province. It is further alleged that members of Mr. Tang Jitian’s family have been intimidated by the police and were reluctant to make a formal complaint about his detention.

239. The detention of Mr. Tang Jitian was widely covered by some websites such as *Twitter* and the Chinese microblog *Weibo* and by overseas human rights organisations. To

date, his fate and whereabouts are unknown, as the police refuse to inform his family on the place where he is being detained.

240. b) Mr. Teng Biao, a prominent human rights defender and lecturer at the Chinese University of Politics and Law in Beijing, was not permitted to renew his lawyer's license allegedly in reaction to his offer to defend Tibetans subject to criminal prosecution following the March 2008 protests in Tibet. Since then, he has provided legal assistance to a number of people facing the death penalty. Recently, he has reportedly set up the non-profit organization China against the Death Penalty. We are also informed that Mr. Teng Biao regularly reports on alleged human rights violations in China, inter alia on *Twitter* and gives interviews to foreign correspondents in China on a regular basis.

241. On 19 February 2011, the police reportedly visited him at his home and returned later to take him away. It is further alleged that the police took two computers, a copier-fax machine, printed materials, between 10 to 20 books on politics, between 20 to 30 documentaries and dozens of photos of Chen Guangcheng from Mr. Teng Biao's home, searched his office and questioned his staff. Reportedly, Mr. Teng Biao was kept in the Beijing Municipal Public Security Bureau and his family has allegedly received no official notification of his detention. It is unclear where he is currently being detained.

242. c) Mr. Jiang Tianyong, currently a Beijing resident, was registered as a lawyer in Zhengzhou in Henan province. He reportedly used to defend a large number of cases of petitioners and in the defence of lawyers' rights and people living with HIV/Aids.

243. In July 2009, it is alleged that Mr. Jiang Tianyong was not allowed to renew his license to practice as a lawyer and thereby has been prevented from taking cases. Since then, he has reportedly worked as a legal advisor to the Aids NGO *Aizhixing*.

244. On 16 February 2011, Mr. Jiang Tianyong attended the meeting mentioned above to discuss the Chen Guangcheng case. Thereafter, at 3:50 p.m., Mr. Jiang Tianyong returned home where he reportedly received a phone call from Yang Fangdian police station of Haidian district requesting him to meet for questioning. It is alleged that Mr. Jiang Tianyong went to meet the police and at about 5:00 p.m., some friends received an SMS from him informing them that he had been beaten, the details of which he later reported on *Twitter*. He said that the police had pushed him several times and that the back of his head once hit the wall, causing him to feel dizzy. After some lawyers went to the police station to have him liberated, he was released from custody.

245. On 19 February 2011, between 3:00-4:00 p.m., Mr. Jiang Tianyong was reportedly taken away by the police in Changping District in front of his brother's home, where he was staying with his wife. In their attempt to stop the police, his brother and his mother were allegedly beaten. Between midnight and 1:00 a.m., the police reportedly arrived at Mr. Jiang Tianyong brother's home the same place again and asked to have Mr. Jiang Tianyong's computer. Despite Mr. Jiang Tianyong's wife opposition, the police allegedly took away the computer which was on the desk. Reportedly, local police informed his family that they had no record on him and that they would file him as a missing person.

246. Concerns have been raised that the human rights defenders and lawyers mentioned above may have been targeted in relation to their legitimate work in the defence of human rights and to prevent demonstrations in support of calls for massive pro-democracy protests across the country on 21 February 2011. Further concern is expressed about the physical and mental integrity of the persons named above whose fate and whereabouts remain unknown.

#### **Communication received**

247. No response has been received to this communication.



**Responses to communications sent earlier (for ease of reference a summary of the communications sent earlier is also reproduced below)**

**Communication sent**

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

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

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

**Communication received**

248. In a letter dated 9 June 2009, the Government responded to the communication dated 19 May 2009 as follows.

*(Translated from Chinese)*

249. Receipt is hereby acknowledged of communication No. G/SO 214 (107-109) G/SO 214 (3-3-16) G/SO 214 (53-24) CHN 12/2009 from the United Nations Human Rights Council's Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Chinese Government has looked carefully into the matter referred to in the communication and wishes to make the following reply.

250. Zhang Kai is a lawyer with the Beijing Globe Yijia Law Firm. Li Chunfu is a lawyer with the Beijing Globe Law Firm. In May 2009, Zhang Kai and Li Chunfu set out for Chongqing. When the local public security office, acting in accordance with the law, sought to check their identities, they refused to produce valid identification documents and were extremely uncooperative. The public security office, in accordance with the law, brought them to the station for investigation. As soon as they had produced valid identification documents, the public security office let them leave. There was absolutely no beating or

illegal detention. The acts referred to in the letter do not correspond to what actually happened.

251. The Chinese Government respectfully requests that the foregoing be reproduced in the relevant United Nations documents.

#### **Comments and observations of the Special Rapporteur**

252. The Special Rapporteur thanks the Government for the response to the communication dated 19 May 2009. She would appreciate receiving substantive information regarding any investigations and inquiries carried out in respect of the allegations of ill-treatment of Mr. Zhang Kai and Mr. Li Chunfu, as requested in the communication.

#### **Concluding comments and observations of the Special Rapporteur**

253. The Special Rapporteur welcomes the replies sent by the Government to the communications dated 27 April 2010 and 9 November 2010. The summaries of the replies will be included in the next report, as they had not been translated at the time of finalizing the present report. However, the Special Rapporteur regrets that no official reply was received to the communications dated 26 August 2010 and 3 March 2011. She considers response to her communications as an important part of the cooperation of Governments with her mandate.

254. The Special Rapporteur remains in particular concerned about the reported pattern of arrests, detentions, enforced disappearances and intimidation of human rights lawyers and activists across the country. Like any other individuals, their right to life, liberty and security shall be guaranteed as enshrined in article 3 of the Universal Declaration of Human Rights. Nor shall they be subjected to arbitrary arrest in accordance with article 9 of the aforementioned Declaration and to ill-treatment in accordance with the Convention against torture and other cruel, inhuman or degrading treatment or punishment, to which China is a State party. In many cases, the reported allegations are believed to be linked whether to their work in the defense of human rights.

255. She urges the Government of the People's Republic of China to transmit, at the earliest possible date, a comprehensive response to the outstanding communications and issues raised therein. Moreover, the Special Rapporteur wishes to reiterate the need to guarantee the right of lawyers to freely represent their clients and perform their professional activity without fear, intimidation and interference. In this respect, the Special Rapporteur would like to stress once again the importance for Governments to respect and take into account the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, aimed at assisting Member States to protect and ensure the proper role of lawyers, in particular principles 16 to 20.

## **Colombia**

### **Comunicaciones enviadas**

256. El 13 de septiembre de 2010, la Relatora Especial sobre la independencia de magistrados y abogados junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la **situación del ex juez penal militar capitán Alexander Cortés**.

257. Según la información recibida el primero de marzo de 2007, después de un proceso de selección por concurso de méritos, el capitán Cortés asumió el cargo de juez 94 de instrucción penal militar adscrito a la Décima Séptima Brigada con sede en Carepa, departamento de Antioquia. Durante su labor como juez militar, el señor Cortés habría encontrado una gran cantidad de casos de muertes presentadas en combate, respecto de las cuales habría existido abrumadora evidencia de que se trataba de ejecuciones extrajudiciales. Teniendo en cuenta que en el ordenamiento jurídico colombiano la investigación de este tipo de hechos, por tratarse de graves violaciones a los derechos humanos, está excluido de la competencia de la justicia penal militar y deben ser investigados por la justicia ordinaria, el juez Cortés habría remitido 54 casos de ejecuciones extrajudiciales a la Fiscalía General de la Nación.

258. Como consecuencia de un traslado ordenado en junio de 2009, el señor Cortés se habría posesionado como juez quinto de instrucción penal militar con sede en Chiquinquirá, departamento de Boyacá. A finales de 2009, la esposa del capitán Cortés, María Elvira Espinosa Triana, habría recibido una llamada de un teniente de la Séptima División con sede en Medellín en la que le habrían advertido que se cuidara, ya que se había realizado una reunión con altos mandos militares en los que se habrían mencionado hechos graves en contra de su esposo. Adicionalmente, la señora Espinosa, habría sido despedida de su cargo como abogada de la Defensoría militar, también a finales de 2009. Este organismo está encargado de proveer la defensa técnica a los militares procesados por la justicia. El director de dicho organismo, le habría manifestado que su contrato se terminaba, como consecuencia de las decisiones judiciales adoptadas por su esposo durante el 2009. Adicionalmente, le habría advertido que, por esta misma razón, su esposo se había ganado como enemigo al General Zapata, quien fue Comandante de la Décimo Séptima Brigada, donde el capitán Cortés se desempeñaba como juez de instrucción.

259. También a finales de 2009, el Ejército Nacional habría realizado un estudio de seguridad minucioso al capitán Cortés y a su círculo familiar, el cual comprendió a su esposa y sus padres. En el desarrollo de este estudio se habrían recogido las direcciones y teléfonos de sus familiares. A la fecha no se conocería el resultado de este estudio de seguridad.

260. El 12 de enero de 2010 el juez Cortés habría sido desvinculado de su cargo aunque no habría existido ningún proceso disciplinario en su contra, ni ningún llamado de atención en el que se dejara constancia de alguna conducta reprochable en el desempeño de sus funciones.

261. El 17 de julio de 2010 la revista Semana, la cual tiene amplia circulación nacional, habría publicado el artículo “Los casos olvidados de los falsos positivos” y la entrevista con el capitán Alexander Cortés “Capitán nunca juzgara a Coronel”. En el primero de estos artículos, como consecuencia de la información que entregó el capitán Cortés, se habrían revelado detalles de diferentes casos de ejecuciones extrajudiciales ocurridos en la zona del Uraba antioqueño que habían sido presentados por miembros del Ejército nacional como muertos en combate. El artículo también habría revelado, con fundamento en grabaciones de audio, como el capitán Duván Hernández después de una conversación con su superior habría decidido presentar como una muerte en combate una ejecución extrajudicial. Para tal fin, el capitán se habría comunicado con un paramilitar quien le consiguió un arma que se habría colocado al lado del cuerpo de la víctima. La publicación de estos artículos habría generado interés en los principales medios nacionales radiales, los cuales habrían entrevistado dos días después de la publicación de la revista al capitán Cortés.

262. Como consecuencia de la protección solicitada a las autoridades estatales, ante el fundado temor de represalias por las denuncias realizadas, y por su actuación como funcionario judicial, el capitán Cortés habría recibido un esquema de protección. Dicho esquema que consiste en la asignación de un vehículo y de un patrullero, sería insuficiente.

En primer lugar, el vehículo no sería blindado. En segundo lugar, el esquema no tendría un tripulante por lo que el escolta asignado debería hacer las veces de conductor, lo cual dificultaría la reacción ante la eventualidad de un atentado.

263. Las deficiencias en el esquema de protección se habrían evidenciado el pasado sábado 21 de agosto de 2010 cuando desconocidos habrían ingresado, al parecer en horas de la tarde, al apartamento donde reside el capitán Cortés con su esposa. Afortunadamente, ellos no se encontraban allí. Las personas que habrían ingresado al apartamento lo habrían hecho a través del patio del edificio, para lo cual habrían desoldado uno de los barrotes que protege este sector. Si bien no habría sido hurtado ningún bien, este ataque contra la inviolabilidad del domicilio de la familia Cortés constituiría una nueva intimidación por la labor desempeñada por Alexander Cortés como juez penal militar y por sus denuncias sobre algunas de las ejecuciones extrajudiciales ocurridas en el Urabá antioqueño. Como consecuencia de estos hechos, se habría ordenado a dos policías de la estación del barrio San Fernando proteger el edificio donde reside la familia Cortés. Sin embargo, el domingo 22 de agosto en horas de la mañana dicha protección habría sido levantada.

264. Se expresó preocupación que las recientes intimidaciones y amenazas de las que ha sido víctima el Sr. Cortés se produjeron como consecuencia de su labor desempeñada como juez penal militar en la región de Urabá antioqueño, así como de sus recientes denuncias acerca de las ejecuciones extrajudiciales en dicha zona del país.

#### **Comunicaciones recibidas**

265. La Relatora Especial no ha recibido, hasta la fecha, ninguna respuesta con respecto a esta comunicación.

#### **Comunicaciones enviadas**

266. El 27 de octubre de 2010, la Relatora Especial sobre la independencia de magistrados y abogados, conjuntamente con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la **situación de la fiscal Ángela María Buitrago**.

267. Según la información recibida, la Dra. Buitrago fue nombrada a principios de 2005 como fiscal encargada del caso del Palacio de Justicia y habría iniciado una investigación sobre los presuntos crímenes por parte de miembros de las fuerzas armadas. Como consecuencia de su investigación, varios miembros de alto rango de las fuerzas armadas estarían siendo investigados o juzgados. En este contexto, hace algunos meses se habría emitido la primera condena penal en el caso contra el Coronel retirado Alfonso Plazas Vega.

268. El 2 de septiembre 2010, el Fiscal General encargado, Guillermo Mendoza Diago, habría pedido a todo el equipo de 11 fiscales que prestan servicios ante la Corte Suprema que presentaran sus dimisiones. Sin embargo, el Fiscal General encargado solo habría aceptado dos de ellas, incluyendo la dimisión de la Dra. Buitrago. La designación y separación de los fiscales forma parte del poder discrecional del Fiscal General. La destitución de la Dra. Buitrago habría tenido lugar unos días después que ésta hubiera llamado a indagatoria a tres generales colombianos en retiro por la ejecución extrajudicial del Magistrado Carlos Horacio Urán.

269. El Fiscal General encargado habría justificado esta decisión aduciendo el escaso rendimiento de la Dra. Buitrago y su negligencia en el desempeño de unos casos asignados debido a la concentración de sus esfuerzos en el caso del Palacio de Justicia. En consecuencia, un procedimiento disciplinar habría sido iniciado contra la Dra. Buitrago.

Según las informaciones recibidas, la Dra. Buitrago habría estado presente en la Corte 285 días en 2009 y en 2010 para seguir todos los casos bajo su competencia. Ahora sus casos habrían sido repartidos entre 5 personas.

270. Según informes recibidos, la Dra. Buitrago habría sido objeto de amenazas, intimidaciones e interferencias en su trabajo vinculadas con su actividad de investigación. La asignación del caso del Palacio de Justicia a otros fiscales podría implicar importantes retrasos en este proceso lo cual podría tener consecuencias procesales negativas de cara a asegurar que los responsables de estos delitos respondan ante la justicia.

271. La destitución de la Dra. Buitrago tendría consecuencias que irían más allá del caso del Palacio de Justicia ya que la Dra. Buitrago habría sido la fiscal encargada en varias investigaciones y procesos judiciales de alto perfil sobre violaciones de derechos humanos, tales como el juicio del ex Director del Departamento Administrativo de Seguridad, Jorge Noguera; o el proceso contra ex oficiales de alto rango de la previa administración como el Vicepresidente Francisco Santos y el asesor del Presidente José Obdulio Gaviria. Estos casos, al igual que el caso del Palacio de Justicia, se encontrarían en estado avanzado de instrucción y la abrupta destitución de la fiscal podría representar un importante retroceso. Además, como consecuencia de la destitución de la Dra. Buitrago, los fiscales de los respectivos casos podrían mostrarse reacios a proceder contra algunos de los inculpados.

#### **Comunicaciones recibidas**

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

#### **Comunicaciones enviadas**

273. El 2 de noviembre de 2010, la Relatora Especial sobre la situación de los defensores de los derechos humanos, junto con la Relatora Especial sobre la independencia de magistrados y abogados, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con **amenazas, hostigamiento y actos de violencia** contra el **Sr. Alexander Montaña** y la **Sra. Sofía Lopez**. La Sra. Lopez y el Sr. Montaña son abogados de derechos humanos asesores legales para la Corporación Justicia y Dignidad, una ONG de derechos humanos. Representan víctimas de violaciones de derechos humanos en el suroeste de Colombia, y llevan peticiones ante la Comisión Interamericana de Derechos Humanos (CIADH).

274. Según las informaciones recibidas, el Sr. Montaña y la Sra. Lopez habrían sido víctimas de seguimiento, actos de violencia física y verbal, así como amenazas, cuando salían de su lugar de trabajo en Cali, Colombia, por la tarde del 5 de octubre del 2010.

275. Según se informa, tras salir de su lugar de trabajo, el Sr. Montaña y la Sra. Lopez se habrían dado cuenta que un grupo de tres personas desconocidas les estaba siguiendo. Dicho grupo les habría amenazado e intimidado, refiriéndose a su trabajo como defensores de derechos humanos. Mas tarde, mientras el Sr. Montaña y la Sra. López esperaban el transporte público, otro individuo desconocido habría atacado al Sr. Montaña, golpeándole e insultándole. Tras la agresión, el individuo se habría retirado y reunido con el grupo de personas que anteriormente les habría seguido y amenazado. Posteriormente, el médico del Sr. Montaña habría recomendado que tomara quince días de baja debido a las lesiones sufridas tras el ataque.

276. En este contexto, la Corporación Justicia y Dignidad habría solicitado al Estado colombiano medidas de protección para sus integrantes con el fin de que pudieran continuar su trabajo representando víctimas. Sin embargo, la Cancillería habría negado su solicitud, indicando que únicamente los beneficiarios de medidas cautelares otorgadas por la CIADH serían elegibles.

277. Se expresó preocupación por las alegaciones recibidas según las cuales los actos de violencia, amenazas e intimidación contra el Sr. Alexander Montaña y la Sra. Sofía López pudieran estar relacionados con sus actividades de promoción y protección de los derechos humanos. Se expresa asimismo preocupación por la integridad física y psicológica del Sr. Montaña y la Sra. López, así como por otros integrantes de la Corporación Justicia y Dignidad.

#### **Comunicaciones recibidas**

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

#### **Comunicaciones enviadas**

279. El 1 de marzo de 2011, la Relatora Especial sobre la situación de los defensores de los derechos humanos, junto con la Relatora Especial sobre la independencia de magistrados y abogados, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación al Sr. **David Ravelo Crespo**, secretario de la junta directiva de la Corporación Regional para la Defensa de los Derechos Humanos; quien además es beneficiario de medidas cautelares de la Comisión Interamericana de Derechos Humanos desde el año 2000. Y, respecto al cual, el 6 de marzo de 2008 se enviaría un Llamamiento Urgente por parte de la Representante Especial sobre la situación de los defensores de los derechos humanos, y el 22 de junio de 2005 se enviaría uno por parte del Representante Especial sobre la situación de los defensores de los derechos humanos, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión.

280. Según la información recibida, el 1 de febrero de 2011, el Sr. David Ravelo Crespo habría sido acusado formalmente por “homicidio agravado”. La acusación está relacionada con una investigación iniciada en 2008 y llevada a cabo por parte del Cuerpo Técnico de Investigación de Colombia, una unidad bajo la Fiscalía General de la Nación por los delitos de “concierto para delinquir” y “homicidio agravado”. Durante el periodo de investigación, la acusación de “concierto para delinquir” habría sido retirada.

281. El 14 de septiembre de 2010, a las 15:00 horas, el Cuerpo Técnico de Investigación de Colombia, habría emitido una orden de captura contra el Sr. David Ravelo Crespo el cual habría sido detenido ese mismo día. Según se informa, el Sr. Ravelo Crespo estaría detenido desde esa fecha en la prisión de la Picota en Bogotá.

282. Las acusaciones habrían estado basadas en las declaraciones de cuatro paramilitares desmovilizados según las cuales el Sr. Ravelo Crespo habría mantenido nexos con la guerrilla Fuerzas Armadas Revolucionarias de Colombia (FARC) y habría sido uno de los autores del asesinato del entonces Secretario de Obras Públicas de Barrancabermeja.

283. Desde el año 2008, cuando la Fiscalía abrió la investigación contra el Sr. Ravelo Crespo, éste habría sido objeto de amenazas contra él y su familia, así como objeto de vigilancia por parte de desconocidos y, en dos ocasiones, objetivo de presuntos atentados contra su vida.

284. Anteriormente, entre 1993 y 1995, el Sr. Ravelo Crespo fue encarcelado bajo el cargo de rebelión pero se le absolvió de todos los cargos en primera y segunda instancia. De acuerdo con la información recibida, la decisión de retirar el cargo de “concierto para delinquir” habría estado relacionada con la absolución del cargo de rebelión.

285. De acuerdo con la información recibida, la criminalización del Sr. Ravelo Crespo se enmarcaría en un contexto de aumento de los casos de judicialización contra defensores de derechos humanos en Colombia.

### Comunicaciones recibidas

286. La Relatora Especial no ha recibido, hasta la fecha, ninguna respuesta con respecto a esta comunicación.

### Comentarios y observaciones de la Relatora Especial

287. La Relatora Especial lamenta que, hasta la fecha de elaboración del presente informe, ninguna de las comunicaciones enviadas haya sido respondida. Por ello, desea invitar al gobierno de Colombia, a proporcionar información relevante a la mayor brevedad posible.

288. La Relatora desea expresar su preocupación por los hechos que, quienes han sido administradores de justicia –jueces y fiscales— y varios abogados, le han manifestado. Situaciones como la falta de procedimiento para determinar la separación del cargo de un juez o de un fiscal, así como las amenazas e intimidaciones ejercidas como represalia por las determinaciones adoptadas en el desempeño de sus funciones, sobre todo cuando se trata de casos graves y sensibles, como son los relativos a situaciones emblemáticas de graves violaciones de derechos humanos. Preocupa también a la Relatora, las noticias recibidas sobre las amenazas e intimidaciones, físicas y verbales, perpetradas en contra de los abogados de derechos humanos; la denunciada aquiescencia estatal e incluso, la reportada negación o insuficiencia de apoyo cuando así ha sido solicitado, tras la puesta en conocimiento estatal, del peligro que corre la vida e integridad física de esos abogados. Finalmente, para la Relatora es conveniente manifestar el incremento de su preocupación respecto al silencio del Gobierno, por cuanto a aquéllos casos que conciernen a abogados que ya han sido objeto de llamamientos urgentes en años anteriores, casos que inclusive han sido objeto de conocimiento de la instancia regional de derechos humanos desde hace años, y que al parecer podrían ser muestra, de una situación de criminalización hacia los abogados que se dedican a la defensa de los derechos humanos.

289. La Relatora recuerda que las respuestas a sus comunicaciones constituyen una parte importante de la cooperación con los Estados.

## Democratic Republic of the Congo

### Communication envoyée

290. Le 29 décembre 2010, la Rapporteuse spéciale, conjointement avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire ; Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression ; Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants , a envoyé un appel urgent concernant la situation de **M. Robert Shemahamba**, journaliste et animateur radio travaillant pour la radio locale privée Mitumba, qui émet à Uvira, Sud-Kivu, ainsi que celle de **M. Dominique Kalonzo**, correspondant de la radio Maendeleo à Bukavu, Sud-Kivu, président de l'Association des Journalistes Défenseurs de Droits de l'Homme et représentant de Journalistes en Danger à Uvira.

291. Selon les informations reçues, le 17 décembre 2010, M. Robert Shemahamba se serait présenté à l'Agence nationale de renseignements (ANR) d'Uvira sur convocation. Il se serait enquis auprès d'un agent du motif de cette convocation et se serait vu répondre qu'il devait être entendu sur procès verbal pour le fait qui lui est reproché, à savoir outrage au chef de l'Etat. M. Shemahamba aurait alors demandé la présence d'un avocat ou défenseur judiciaire à ses côtés. En réponse, l'agent aurait ordonné son arrestation immédiate et sa détention dans les locaux de l'ANR. M. Shemahamba y aurait été détenu dans des conditions déplorable jusqu'au 24 décembre, date de son transfert aux locaux de l'ANR à Bukavu. M. Shemahamba souffre d'hypertension et sa femme, qui lui aurait rendu

visite à trois reprises dans les locaux de l'ANR à Uvira, aurait remarqué une dégradation de son état de santé.

292. Il serait reproché à M. Shemahamba d'avoir animé le 12 décembre 2010 une émission intitulée 'Franc Parler' sur les antennes de radio Mitumba, au cours de laquelle M. Dominique Kalonzo, ainsi que deux membres des partis politiques MLC et Patriotes Kabilistes, avaient abordé des sujets d'actualité de manière critique, notamment le discours du chef de l'Etat tenu le 8 décembre 2010 au Parlement national.

293. Suite à l'émission, M. Kalonzo serait entré en clandestinité, craignant pour sa vie. Quelques jours plus tard, il aurait été arrêté par des agents de l'ANR à Uvira qui l'auraient menotté et traîné sur le sol, avant de le rouer de coups sur diverses parties de son corps. M. Kalonzo aurait été admis à l'hôpital inconscient, le visage tuméfié, puis aurait été enlevé par deux individus.

294. De sérieuses craintes sont exprimées quant au fait que l'arrestation et la détention de M. Shemahamba, ainsi que l'arrestation, l'agression et l'enlèvement de M. Kalonzo, soient liés à l'exercice de leur droit à la liberté d'opinion et d'expression. Des craintes sont également exprimées quant à leur intégrité physique et mentale, en particulier dans le cas de M. Shemahamba qui souffre d'hypertension.

#### **Communication reçue**

295. Aucune réponse n'a été recue à ce jour.

### **Commentaires et observations de la Rapporteuse spéciale**

296. La Rapporteuse regrette, au moment de la finalisation du présent rapport, l'absence de réponse à la communication en date du 29 décembre 2010. Elle considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Elle exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans sa communication, notamment en indiquant la base légale ayant prévalu à l'arrestation et la détention de M. Shemahamba ainsi qu'à l'arrestation de M. Kalonzo et l'usage de la force à son encontre. Elle prie le Gouvernement de fournir toute information sur tout résultat des enquêtes menées en relation avec l'enlèvement de M. Kalonzo.

## **Egypt**

#### **Communication sent**

297. On 12 August 2010, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning **Mr. Mes'ed Al Shaf'i**.

298. On 19 April 2010, Mr. Mes'ed Al Shaf'i, a member of the Muslim Brotherhood, was arrested by State Security Investigations (SSI) agents, dressed in civilian clothes. Mr. Mes'ed Al Shaf'i. was then taken to the SSI office in Nasr City, where he was held in secret detention for 47 days. During this time, he was hung by the wrists and beaten until he lost consciousness; he was forced to stand for several days; deprived of sleep; suspended for long periods in various positions; subjected to electric shocks on different parts of the body. In addition, he was threatened with sexual abuse and that his family would be harmed if he did not confess to information regarding other members of the Muslim Brotherhood.

299. On 20 May, Mr. Al' Shafi finally appeared at Al Mahkoum prison in Torah region. He remains in detention there without having been subjected to any judicial proceedings.



### Communication received

300. At the time this report was finalized, no response to this communication had been received.

### Communication sent

301. On 4 February 2011, the Special Rapporteur, jointly with together with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the **worsening of the situation of human rights defenders and journalists in Egypt, in relation to the demonstrations which have been taking place across the country since 25 January 2011.**

302. According to the information received, on 1 February 2011, Mr. Malak Adly, a lawyer from the Hisham Mubarak Law Center (HMLC) which has been providing legal assistance to protestors arrested in demonstrations, was arrested by security forces and his whereabouts remain unknown as of today.

303. On 3 February, the offices of the HMLC and the Egyptian Center for Economic and Social Rights, which have been supporting an impromptu medical center in a mosque near Tahrir Square to treat those injured in the protests, were raided by military police, accompanied by unidentified men in civilian clothes. They searched both offices, and confiscated the equipment and the mobile phones of several staff. More than 30 persons working for both centers, Human Rights Watch and Amnesty International, were reportedly arrested, beaten, and taken to an undisclosed location.

304. Those arrested include: 1) **Mr. Ahmed Seif El Islam**, former Director of HMLC; 2) **Mr. Mohsen Beshir**, HMLC lawyer; 3) **Mr. Mostafa Al Hassan**, HMLC lawyer; 4) **Ms. Mouna Al Masry**, HMLC researcher; 5) **Mr. Al Sayed Feky**, HMLC lawyer; 6) **Mr. Mohamed El Taher**, HMLC staff member; 7) **Ms. Fatma Abed**, Front to Defend Egypt Protestors (FDEP) volunteer; 8) **Ms. Shahdan Abou Shad**, FDEP volunteer; 9) **Ms. Nadine Abu Shadi**, FDEP volunteer; 10) **Ms. Nadia Hashem**, FDEP volunteer; 11) **Mr. Ahmed Hamdy Mahmoud**, student from Assiut University; 12) **Mr. Said Haddadi**, Amnesty International; 13) Another Amnesty International staff member whose identity is known to the mandate-holders; 14) **Mr. Daniel Williams**, Human Rights Watch; 15) **Ms. Sofia Amara**, French citizen working for Magneto Press; and 16) **Mr. Pedro da Foneska**, Portugese Citizen working for Magneto Press.

305. In connection to these arrests, it is further reported that the offices of the HMLC were surrounded by supporters of the current Government, threatening with weapons the people inside the Center's premises. After the aforementioned persons were arrested, thugs reportedly destroyed the premises of HMLC, including document and case files which will impact on the lives of victims defended by the Center.

306. On the same day, in the evening, **Mr. Amr Salah**, researcher at the Cairo Institute for Human Rights Studies, was arrested along with activists **Ms. Shadi Al Ghazali Harb**, **Mr. Nasser Abdel Hamid**, **Mr. Mohamed Arafat**, **Mr. Ahmed Douma**, **Mr. Amr Ezz**, and **Mr. Ahmed (surname unknown)** in El Haram area, Giza, Cairo. They are reportedly being detained in El-Haram police station.

307. In addition, some unidentified men in civilian clothes entered the Nadim Center for Rehabilitation of Victims of Violence, which provides legal assistance to victims of torture, and threatened the personnel of the organisation.

308. Furthermore, security forces and unidentified men in civilian clothes have continued to harass national and international journalists covering the protests, searching their hotel rooms, and confiscating their equipment. **Mr. Rajesh Bhardwaj**, a journalist for CNN-IBN, was reportedly arrested by security forces, before been released some hours later.

#### **Communication received**

309. At the time this report was finalized, no response to this communication had been received.

#### **Comments and observations of the Special Rapporteur**

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

311. With regard to the communication dated 12 August 2010, the Special Rapporteur urges the Government to indicate the reasons why Mr. Mes'ed Al Shaf'i, has not been brought before a court to determine the legality of his detention. In respect of the communication dated 4 February 2011, the Special Rapporteur urges the Government to provide information on the fate and whereabouts of the persons named above whose fate and whereabouts were unknown. She further urges the Government to provide detailed information on any investigations conducted in relation to these cases.

#### **Equatorial Guinea**

##### **Comunicación enviada**

312. El 1 de octubre de 2010, la Relatora Especial sobre la independencia de magistrados y abogados y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron conjuntamente, una carta de alegación señalando a la atención urgente del Gobierno la información relacionada con la **ejecución**, a las 15:30 horas del sábado 21 de agosto de 2010, de los **ciudadanos ecuatoguineanos José Abeso Nsue, Manuel Ndong Aseme y Alipio Ndong Asumu**, ex oficiales de las Fuerzas Armadas, y **Jacinto Micha Obiang**, ex funcionario de Aduanas.

313. Según la información recibida, las ejecuciones por fusilamiento se habrían producido media hora después de leerse la sentencia condenatoria. El mismo tribunal que les juzgó también habría condenado a 15 años de prisión a los ciudadanos Marcelino Nguema Esono y Santiago Asumu, militantes de Unión Popular. Todos ellos habrían sido acusados de participar en el ataque al palacio presidencial de Malabo, ocurrido el 17 de febrero de 2009. Los cuatro fusilados habrían sido secuestrados en Nigeria, traídos clandestinamente a Guinea Ecuatorial el pasado mes de enero y encerrados en las celdas de la cárcel principal de Malabo (Black Beach), donde también habrían sufrido malos tratos.

314. Las ejecuciones habrían sido ordenadas por un tribunal militar en violación de la Ley Fundamental de Guinea Ecuatorial y de otras normas vigentes en materia penal. De hecho, según el artículo 11 de la reformada Ley Orgánica del Poder Judicial, la competencia de la jurisdicción militar estaría limitada al ámbito estrictamente castrense respecto de los hechos tipificados como delitos o faltas por el Código de Justicia Militar. También establecería que cuando en la comisión de los hechos aparecieran implicados personal castrense y civil, el conocimiento de la correspondiente causa competere a la jurisdicción ordinaria. Sin embargo, a pesar del hecho que tres de los cuatro ciudadanos ejecutados habían sido apartados de las Fuerzas Armadas hacía más de 20 años - y que

tanto el cuarto de ellos como los dos militantes de Unión Popular arriba mencionados, eran civiles – la causa no ha sido determinada por un tribunal ordinario como hubiera correspondido.

315. Además, si bien el artículo 37, c) de la misma Ley Orgánica del Poder Judicial, establecería que las sentencias penales de la jurisdicción militar podrán ser recurridas en casación ante la Corte Suprema de Justicia, no se hubiera dado posibilidad alguna a los condenados para que pudieran recurrir, sino que habrían sido fusilados treinta minutos después de la condena.

316. También se habría violado el artículo 13, g) de la Ley Fundamental de Guinea Ecuatorial, que prevé que nadie podrá ser juzgado ni condenado dos veces por los mismos delitos, dado que Marcelino Nguema Esono y Santiago Asumu, que habrían sido juzgados y absueltos en el mes de marzo de este año por los mismos hechos, habrían sido ahora nuevamente juzgados y condenados a 15 años de prisión por los mismos hechos.

317. Finalmente, se llamo la atención del Gobierno sobre el hecho de respetar de manera escrupulosa los derechos de toda persona, en condiciones de plena igualdad, a ser oída públicamente y con justicia por un tribunal independiente e imparcial; sobre todo en casos en que puede resultar aplicada la pena capital.

#### **Comunicaciones recibidas**

318. La Relatora Especial no ha recibido, hasta la fecha, ninguna respuesta con respecto a esta comunicación.

#### **Observaciones de la Relatora Especial**

319. La Relatora Especial lamenta que hasta la fecha, no se haya recibido respuesta alguna por parte del gobierno; la situación descrita es, a todas luces alarmante. La Relatora apreciaría una respuesta a esta comunicación.

320. Preocupa que de ser ciertos todos los hechos expuestos, conforme a los artículos 2.3, 6, 9, 14 del Pacto Internacional de Derechos Civiles y Políticos, así como la Opinión General No. 32 del Comité de Derechos Humanos, habría tenido lugar en perjuicio de las seis personas señaladas, una concatenación de violaciones a los derechos humanos. Ello en virtud de que cuatro de ellos habrían sido privados de su libertad clandestinamente; todos serían civiles al momento de ser juzgados por un Tribunal Militar; cuatro de ellos condenados a la pena capital con la inmediata denegación *de facto* para impugnar tal decisión, puesto que la sentencia se habría ejecutado media hora después de ser recibida; y dos de los seis referidas, habrían sido juzgadas dos veces por los mismos hechos, condenados en el segundo juicio ante la instancia militar, a una pena privativa de libertad de 15 años, contraviniendo el principio general de *non bis in idem*, universalmente reconocido.

### **Guatemala**

#### **Comunicación enviada**

321. El 3 de marzo de 2011, la Relatora Especial sobre la independencia de magistrados y abogados, envió un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida respecto al **proceso de elección de magistrados de la Corte de Constitucionalidad para el período 2011-2016**, que en esas fechas se llevara a cabo en Guatemala. Igualmente, se agradeció al gobierno las acciones anteriores llevadas a cabo por este mandato en los procesos de elección de magistrados de la Corte Suprema de Justicia y

de la Corte de Apelaciones, que incluyeron, entre otras, un llamamiento urgente fechado el 2 de octubre de 2009 y un comunicado de prensa emitido el 5 de octubre de 2009.

322. El artículo 269 de la Constitución Política de la República dispone que la Corte de Constitucionalidad estará integrada por cinco magistrados titulares, cada uno de los cuales tendrá su respectivo suplente. Los magistrados durarán en sus funciones cinco años y serán designados en la siguiente forma: un magistrado por el pleno de la Corte Suprema de Justicia; un magistrado por el pleno del Congreso de la República; un magistrado por el Presidente de la República en Consejo de Ministros; un magistrado por el Consejo Superior Universitario de la Universidad de San Carlos de Guatemala; y un magistrado por la Asamblea del Colegio de Abogados.

323. A pesar de que la Constitución no establece un procedimiento para la elección de los magistrados por cada uno de los órganos antes señalados. La Ley de Amparo, Exhibición Personal y de Constitucionalidad establece al respecto los parámetros generales, a saber:

(a) La designación de magistrados titulares y suplentes por parte del pleno de la Corte Suprema de Justicia y por parte del pleno del Congreso de la República se realizará mediante convocatoria expresa, por mayoría absoluta de votos y de conformidad con los procedimientos que determinen sus leyes internas (artículo 154);

(b) La designación de magistrados titulares y suplentes por parte del Consejo Superior Universitario y por parte de la Asamblea General del Colegio de Abogados se hará por mayoría absoluta de votos de los miembros presentes en el acto electoral en votación secreta. En este acto no se podrán ejercitar representaciones. La convocatoria para el acto electoral en ambos casos deberá hacerse con una anticipación no menor de quince días y deberá publicarse en el Diario Oficial y en dos diarios de mayor circulación (artículo 155);

(c) No es impugnabile el procedimiento interno para la designación de los magistrados por el pleno de la Corte Suprema de Justicia, por el pleno del Congreso de la República y por el Presidente de la República en Consejo de Ministros (artículo 156); y

(d) La designación de magistrados por el Consejo Superior Universitario de la Universidad de San Carlos de Guatemala y por la Asamblea del Colegio de Abogados de Guatemala podrán ser impugnadas conforme a la ley; pero mientras se resuelvan las impugnaciones continuarán actuando los magistrados titulares y suplentes que deben ser sustituidos (artículo 156).

Finalmente, según el artículo 270 de la Constitución y 151 de la Ley de Amparo, Exhibición Personal y de Constitucionalidad, los requisitos para ser magistrado de la Corte de Constitucionalidad son: ser guatemalteco de origen; ser abogado colegiado; ser de reconocida honorabilidad; y tener por lo menos quince años de graduación profesional. Además de estos requisitos, la Ley de Amparo, Exhibición Personal y de Constitucionalidad agrega que los magistrados de la Corte de Constitucionalidad “deberán ser escogidos preferentemente entre personas con experiencia en la función y administración pública, magistraturas, ejercicio profesional y docencia universitaria, según sea el órgano del Estado que lo designe” (artículo 152).

324. De conformidad con la información recibida, cada una de las instituciones que intervienen en la elección de magistrados a la Corte de Constitucionalidad establecieron diferentes criterios para desarrollar sus respectivos procedimientos, tal como se describe a continuación:

(a) **Presidente de la República.** El 3 de febrero 2011 del año en curso, el Presidente de la República, expresaría a través de los medios de comunicación que no haría una convocatoria pública para la designación del magistrado titular y del suplente que le corresponde elegir. Frente a esta manifestación del Presidente, diversas organizaciones de la sociedad civil señalaron públicamente su profunda preocupación por dicha decisión y lo

exhortarían a reconsiderar su actitud, en el marco del cumplimiento de los principios de transparencia, publicidad y objetividad que deben observarse en estos procesos, en cumplimiento tanto del derecho interno como de las obligaciones internacionales emanadas, entre otros, del Pacto Internacional de Derechos Civiles y Políticos y de la Convención Americana sobre Derechos Humanos.

(b) **Corte Suprema de Justicia (CSJ).** El 28 de febrero de 2011, la CSJ publicó en el Diario Oficial la convocatoria para el proceso de elección de magistrado titular y suplente por este organismo. La convocatoria incluyó los principios que regirían el procedimiento (transparencia; publicidad; nominación por capacidad, méritos, idoneidad y ética; auditoría social; voto nominal de los magistrados; excelencia profesional; objetividad; y independencia); el perfil de los aspirantes que incluyó las competencias profesionales; cualidades éticas; e idoneidad y la documentación necesaria que debería ser presentada por los candidatos. En la convocatoria se hizo constar que en el procedimiento de evaluación, la CSJ ponderaría los diferentes requisitos y elementos del perfil con el objetivo de reconocer y valorar aquellos méritos y fortalezas en cada uno de los aspirantes, indicando además que al final del proceso se haría una votación razonada. La CSJ no publicó una tabla de gradación para evaluar los aspectos anteriormente señalados. Sin embargo, la CSJ publicó en su página Internet un cronograma en donde se establecen con precisión las fechas en las que se desarrollarán las diferentes etapas del proceso, que incluyen la convocatoria de aspirantes, la recepción de solicitudes, la calificación de los requisitos, el periodo de objeciones y de auditoría social, la evaluación de los aspirantes, y la fecha de la elección.

(c) **Congreso de la República.** El 4 de febrero de 2011, el Congreso de la República publicó la convocatoria para los aspirantes al cargo de magistrado titular y suplente de la Corte de Constitucionalidad, a través del Diario Oficial (acuerdo número 2-20011). En esta convocatoria únicamente, se haría constar que se convocaba a los profesionales que “cumplan con los requisitos constitucionales y legales requeridos para optar al cargo de magistrado titular y magistrado suplente”, no se incluyó información acerca del perfil ni del procedimiento de elección. Tampoco habría información disponible sobre las audiencias de descargo de objeciones ni sobre la evaluación de los aspirantes. La información disponible sobre el proceso de selección por parte del Congreso de la República incluyó las fechas de la convocatoria de los aspirantes, la recepción de solicitudes, el periodo de objeciones y de auditorías sociales y la fecha de elección.

(d) **Consejo Superior de la Universidad de San Carlos de Guatemala (USAC).** La USAC publicó el 28 de enero de 2011 la convocatoria para designación del magistrado titular y suplente ante la Corte de Constitucionalidad. La convocatoria incluyó la documentación necesaria que debe presentarse y el perfil ideal del magistrado, que en términos generales hace referencia a la formación académica, desarrollo y actualización profesional; haberse desempeñado como docente universitario preferentemente; haber efectuado investigaciones, publicaciones y/o ensayos jurídicos; haber demostrado honradez y valores éticos; independencia para el eficiente cumplimiento de sus funciones; y compromiso con la plena vigencia del Estado de Derecho y los derechos humanos y proyección humana. No se haría referencia al procedimiento y a la tabla de gradación para evaluar estos aspectos del perfil ideal, ni a las audiencias de descargo de objeciones.

(e) **Colegio de Abogados y Notarios.** La Junta Directiva del Colegio de Abogados y Notarios, realizaría la convocatoria para elección de magistrado titular y suplente el 20 de enero de 2011, a través del Diario Oficial. En la convocatoria se harían constar los aspectos siguientes: las diferentes regiones del país en las que los profesionales del Derecho pueden ejercer su voto; la fecha límite para que los aspirantes se inscribieran y fijó como fecha para la Asamblea General de elección el 4 de marzo 2011. La elección debería ser realizada en Asamblea General, en la cual las y los abogados colegiados activos

votarían en forma individual y secreta, de acuerdo con el “Reglamento de elecciones de la Asamblea General del Colegio de Abogados y Notarios de Guatemala”.

325. De conformidad con la información disponible, todas las instituciones que intervienen en el proceso de elección convocaron públicamente a las y los aspirantes a dicho cargo (Corte Suprema de Justicia; Congreso de la República; Consejo Superior Universitario de la Universidad de San Carlos de Guatemala; y Colegio de Abogados y Notarios), con excepción del Presidente de la República; todas las instituciones establecieron un plazo para la presentación de objeciones de candidatos y de audiencia de descargo por parte de éstos (con excepción del Presidente de la República y del Colegio de Abogados y Notarios). Así mismo, tanto la Corte Suprema de Justicia como el Consejo Superior Universitario de la Universidad de San Carlos de Guatemala, publicaron un perfil de las y los aspirantes, el cual tomarían como base para la evaluación de los candidatos. No obstante, se expresó profunda preocupación, entre otros, por la falta de claridad respecto a los criterios y la tabla de gradación que utilizarían para llevar a cabo la evaluación de cada aspirante, esta situación se presenta también con el Congreso y el Presidente de la República.

326. Asimismo, se insistió en la necesidad de redoblar esfuerzos para garantizar que la elección de los magistrados titulares y suplentes del máximo Tribunal Constitucional se realizara con base en criterios transparentes y objetivos que aseguren la elección de magistrados independientes, probos y competentes. Se recordó al gobierno los estándares internacionales que reafirman los principios señalados, relativos a la independencia de la judicatura y el informe de la misión realizada por este mandato a Guatemala en 2009, con hincapié en el señalamiento que el Relator Especial hiciera respecto a la selección y nombramiento de los magistrados.

#### **Comunicaciones recibidas**

327. En carta fechada el 15 de abril de 2011, el Gobierno respondió al llamamiento urgente con fecha 3 de marzo de 2011.

328. De acuerdo al Informe del Estado de Guatemala, la elección de Magistrados o Magistradas de la Corte de Constitucionalidad constituye uno de los procesos de mayor importancia y responsabilidad para la aplicación e interpretación de la Constitución Política de la República como norma fundamental rectora del desarrollo, la paz y la convivencia nacional y la defensa y promoción del orden constitucional. Conforme los artículos 269 de la Constitución Política de la República; 150 a 154 de la Ley de Amparo, Exhibición Personal y de Constitucionalidad (Decreto 1-86 de la Asamblea Nacional Constituyente), corresponde a la Corte Suprema de Justicia designar un magistrado titular y un suplente para integrar dicho Tribunal para el periodo 2011-2016.

329. El informe del estado establece, bajo el rubro de PRINCIPIOS RECTORES DEL PROCESO DE DESIGNACIÓN, que aunque no está previsto un procedimiento legal para que la Corte Suprema de Justicia designe un magistrado Titular y un Suplente al tribunal de referencia, en un Estado de Derecho cualquier decisión pública debe ser motivada, transparente y razonada. En tal virtud, el proceso de elección de magistrados de referencia se regirá conforme a los siguientes principios: Transparencia; publicidad; nominación por capacidad, méritos, idoneidad y ética; auditoría social; voto nominal de los magistrados; excelencia profesional; objetividad; independencia.

330. Así mismo, bajo el rubro de PERFIL Y EVALUACIÓN, se refiere que la Corte Suprema de Justicia para el proceso de selección y designación de magistrados titular y suplente de la Corte de Constitucionalidad, adopta, además de otros, los principios básicos definidos en la Ley de Comisiones de Postulación, de transparencia, excelencia profesional, objetividad y publicidad y, aunque el proceso de selección para la Corte de

Constitucionalidad no está regulado por dicha ley, estima oportuno que dichos principios sean aplicados al proceso para la designación que corresponda a esta Corte.

331. El proceso se llevará a cabo mediante convocatoria pública y se hará la designación atendiendo los contenidos del siguiente perfil de Magistrado de la Corte de Constitucionalidad, según la cual se harán las valoraciones de los expedientes de quienes presenten sus candidaturas y al final del proceso se hará una votación razonada.

(a) Requisitos indispensables: Guatemalteco de origen; abogado colegiado activo; profesional de reconocida honorabilidad; tener por lo menos 15 años de graduación profesional y estar en pleno goce de sus derechos ciudadanos.

(b) Competencias profesionales, preferentemente: Experiencia en magistraturas o experiencia profesional en materia constitucional; estudios a nivel de post-grado; experiencia en docencia universitaria o docencia impartida en las distintas instituciones vinculadas al sector de justicia; publicaciones, contar con ensayos y estudios relacionados con temas constitucionales; tener vocación de servicio —participar o haber participado en actividades de proyección social y desarrollo humano—; capacidad para trabajar en equipo.

(c) Cualidades éticas: Que en su ejercicio profesional haya demostrado honradez y valores éticos; independencia que garantice el eficaz ejercicio de la magistratura; compromiso con la plena vigencia del Estado de Derecho y el respeto a los derechos establecidos por la Constitución Política y derechos afines; no ser susceptible, por su ejercicio profesional o su vida privada o pública, de señalamientos que lo vinculen con asesoría o patrocinio habitual a referentes del crimen organizado; carecer de señalamientos en el ámbito penal, administrativo o ético que revistan características tales que fundadamente arrojen dudas acerca de su honorabilidad e idoneidad.

(d) Idoneidad: Para valorar la idoneidad se tendrán al menos en cuenta: el liderazgo, aptitud para trabajar en equipo, independencia, control cognitivo, tolerancia y honestidad. Asimismo, no tener vinculación con los órganos de dirección de los partidos políticos ni ser pariente, dentro de los grados de ley, de los magistrados de la Corte Suprema de Justicia.

(e) Procedimiento de selección: En el procedimiento de evaluación, la Corte Suprema de Justicia ponderará los diferentes requisitos y elementos del perfil con el objetivo de reconocer y valorar todos aquellos méritos y fortalezas en cada uno de los aspirantes a Magistrado de la Corte de Constitucionalidad.

332. En cuanto al procedimiento a cumplir por la Corte Suprema de Justicia y el Cronograma; la Convocatoria sería publicada la última semana de enero 2011; la presentación de solicitudes y documentos sería del 31 de enero al 7 de febrero de 2011; la calificación del cumplimiento de requisitos de solicitud tendría lugar del 8 al 10 de febrero 2011; la publicación de solicitudes admitidas sería el 11 de febrero 2011; la Auditoría social —periodo para presentar objeciones por escrito a los solicitantes— sería del 11 al 18 de febrero de 2011, la Audiencia para descargo de objeciones por escrito serían del 19 al 26 de febrero de 2011; la Evaluación de solicitudes y preselección de 6 candidatos sería del 28 de febrero al 4 de marzo; la publicación de nómina de 6 candidatos se haría el 5 de marzo 2011; la Exposición pública de preseleccionados sobre razones y justificaciones de la opción al cargo tendría lugar el 8 de marzo 2011; y, la Sesión extraordinaria de la CSJ para elegir magistrados titular y suplente por mayoría absoluta de votos sería el 10 de marzo 2011.

333. Sobre la documentación a presentar por los interesados al cargo, se señalaron los siguientes: Formulario de solicitud; constancia original de Colegiación Activa; constancia o certificación de por lo menos 15 años de graduación profesional; constancia de carencia de antecedentes penales; constancia de carencia de antecedentes policíacos; constancia del

Tribunal de Honor del Colegio de Abogados y Notarios de Guatemala, de no haber sido sancionado; constancias de no haber sido sancionado por el régimen disciplinario de la institución donde labora actualmente y de las instituciones en las cuales haya laborado; certificación original de la partida de nacimiento, fotocopia de la Cédula de Vecindad o del Documento Personal de Identificación; *Curriculum vitae* y respectivas constancias; resumen curricular, certificación extendida por el Registro de Ciudadanos, haciendo constar que el candidato se encuentra en pleno goce de sus derechos políticos y que no ocupa cargo directivo en ningún partido político; Acta Notarial de Declaración Jurada, para constar que el aspirante está en el pleno ejercicio de sus derechos civiles y políticos y que no ha sido inhabilitado para ejercer cargos públicos; Acta Notarial de Declaración Jurada en donde conste que el aspirante no tiene parentesco dentro de los grados de ley, con algún Magistrado de la Corte Suprema de Justicia; y, Acta Notaria de Declaración Jurada de no estar comprendido en los casos de impedimento establecidos en el Artículo 16 de la Ley de Probidad y Responsabilidades de los Funcionarios y Empleados Públicos.

### **Comunicaciones recibidas**

334. Mediante comunicación fechada el 6 de septiembre de 2010, el gobierno de Guatemala envió un informe actualizado relacionado al caso del Señor Amilcar Pop Ac, quien fuera objeto de un llamamiento urgente enviado el 19 de agosto de 2008, por el entonces Relator Especial sobre la independencia de magistrados y abogados, junto con la Relatora Especial para la situación de los defensores de los derechos humanos y el Relator sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas. Es de mencionarse que el Estado habría enviado en fecha 20 de marzo de 2009, sendas comunicaciones en respuesta al llamamiento mencionado.

335. El llamamiento de referencia, en su parte conducente señalaba que: El 2 de agosto de 2008, el Sr. Amilcar Pop fue perseguido y amenazado con un arma de fuego, por los pasajeros de una pick-up blanca doble cabina con vidrios polarizados y sin placas, quienes llevaban máscaras que hacían imposible su identificación. Los individuos lo habrían amenazado de muerte. El Sr. Amilcar Pop, habría logrado escapar, resultando lesionado, motivo por el cual se dirigió a un hospital. Una vez en el hospital, descubrió que la pick-up se encontraba estacionada detrás de su coche. Sin embargo, cuando salió, ya no estaba allí. Conforme a la información recibida, a lo largo de los años 2007 y 2008, los integrantes de la Asociación de Abogados y Notarios Mayas de Guatemala (AANMG) habrían recibido varias amenazas de muerte —por teléfono y correo— para que dejaran de proporcionar asistencia legal a las comunidades de San Juan Sacatepéquez. Igualmente, se habría informado que la AANMG había sido objeto de varias denuncias ante el Ministerio Público por parte del Consejo Municipal por intimidación, amenazas y coacción. Se alegó que dichas denuncias no están sustentadas en ninguna evidencia. Asimismo, se informó que la AANMG habría sido falsamente acusada de ser responsable del asesinato del Sr. Francisco Tepeu Piri, un habitante del Municipio de San Juan Sacatepéquez, quien murió después de una protesta contra Cementos Progresos SA, la cual tuvo lugar el 21 de junio de 2008. Por todo lo anterior se expresó preocupación por las amenazas y acusaciones en contra del Sr. Amilcar Pop y de otros miembros de la AANMG, las cuales podrían estar directamente relacionadas con sus actividades de legítima defensa de los derechos de las comunidades indígenas de San Juan Sacatepéquez.

336. De la comunicación enviada el 6 de septiembre de 2010 por el gobierno de Guatemala, sobre el Informe Actualizado del Estado relacionado al caso del Sr. Pop, es de destacarse que, el 1 de junio de 2010 el Señor Amilcar de Jesús Pop Ac, habría sido objeto de robo cuando se encontraba en un restaurante de comida rápida de la zona 9 de la ciudad capital, donde sustrajeron de su vehículo documentos personales y una laptop.



337. Bajo el rubro acciones del Estado, el Gobierno señaló que, el mismo día –1 de junio 2010— el Sr. Pop interpondría la denuncia respectiva ante la Fiscalía Distrital Metropolitana, Agencia Fiscal N° 1 de la Unidad de Delitos Patrimoniales y Comunes del Ministerio Público, bajo el número de Expediente MP001/2010/57953. El 17 de junio de 2010, el Sr. Pop sería citado con la el objeto de ratificar su denuncia, sin embargo, no se habría presentado. Se citaría a los agentes de la Policía Nacional Civil que se apersonaron al lugar de los hechos, quienes se presentaron el 29 de junio de 2010.

338. Además, el estado señaló que ha pedido informes a:

1) La Entidad Metropolitana Reguladora del Transporte y Tránsito del Municipio de Guatemala, con el objeto de determinar si existen cámaras de seguridad en el lugar donde se produjo el hecho;

2) La Unidad Fiscal de Delitos contra Operadores de Justicia, con el objeto de Informar si en la referida fiscalía están realizando las diligencias correspondientes para dar con los presuntos responsables de robo en contra del senior Pop. Al respecto, se informaría en forma verbal que el Senior Pop solicitó que se nombraran investigadores para que iniciaran las investigaciones respectivas en el presente caso;

3) Al número 110 de la Policía Nacional Civil, para pedir copia de la denuncia telefónica presentada por el senior Amílcar Pop Ac;

4) A la dirección de Investigación Criminal –DICRI— del Ministerio Público, para que nombre investigadores que inicien las investigaciones respectivas en el presente caso;

339. Se informó también que, el Ministerio Público habría solicitado autorización judicial para requerir al restaurante de comida rápida que informe si cuenta con circuito cerrado e indique qué empresa de seguridad presta el servicio y si existen medidas de seguridad y de protección para los clientes. Finalmente, la comisión presidencial coordinadora de la política del Ejecutivo en materia de Derechos Humanos, se comprometió a comunicar a los Relatores el avance de las investigaciones.

### **Observaciones de la Relatora Especial**

340. La Relatora especial agradece la respuesta del Gobierno de Guatemala a la comunicación referente al proceso de selección de los magistrados de la Corte de Constitucionalidad. Sin embargo, apreciaría recibir más información sobre todos los actores implicados en dicho proceso, en virtud de que la respuesta, únicamente hizo referencia a una de las convocatorias que a tal efecto fueron publicadas. Por ello, resulta necesario formular algunas consideraciones.

341. Llama la atención de la Relatora el hecho de que este sea el segundo comunicado concerniente a los procesos seguidos en Guatemala para elegir a sus magistrados. Recuerda que, en el periodo de actividades pasado, envió al gobierno un llamamiento urgente relativo a la falta de aplicación de los principios de transparencia, objetividad e idoneidad que deben imperar en este tipo de procesos. Llamamiento que, desafortunadamente, no encontró respuesta alguna, aún cuando era relativo a los operadores de justicia de la Corte Suprema de Justicia y la Corte de Apelaciones. Ahora, una vez más, es llamado a la atención de la Relatora, situaciones que representan irregularidades en un proceso de elección de magistrados, ahora de la Corte de Constitucionalidad.

342. Fue puesto en conocimiento de la Relatora, la fundamentación constitucional y legislación que resulta aplicable a la elección de los 5 magistrados que han de conformar la Corte de Constitucionalidad. A la luz de la misma, fueron señaladas las 5 instituciones que tienen a su cargo la designación de cada uno de los magistrados –titular y respectivo suplente—. Ahora bien, si bien es cierto que se toma nota de la publicidad, que cuatro

instituciones dieron, a las convocatorias y los plazos para la designación de los magistrados; pues ello es prueba de los esfuerzos por garantizar el principio de transparencia en la elección. No menos cierto es, que la Relatora lamenta que las cuatro convocatorias publicadas adolecieran, al menos de alguno de los siguientes aspectos: claridad respecto a los criterios de gradación para la evaluación de los aspirantes, ausencia de publicación del perfil requerido y, omisión sobre el procedimiento para la presentación de objeciones a las designaciones. La Relatora considera que la ausencia de cualquiera de los anteriores aspectos, atropellan los criterios de objetividad e idoneidad que deben existir en los procesos de selección de magistrados.

343. Además, la Relatora manifiesta su profunda preocupación frente a la declaración presidencial, a través de los medios de comunicación, sobre la determinación de no publicar convocatoria alguna para efectuar la designación del magistrado; sobre todo teniendo en cuenta, que dicha designación por ningún motivo puede ser objeto de impugnación. La Relatora considera que este hecho, constituye un riesgo para la Independencia de la Judicatura, que contraviene la propia finalidad del Tribunal en cuestión, pues conforme al propio texto constitucional, éste es concebido como un tribunal colegiado con independencia de los demás organismos del Estado. Para la Relatora, esta situación puede resultar contraria a los principios 1 y 2 del Conjunto de Principios básicos relativos a la independencia de la Judicatura, ya que podría favorecer intromisiones, restricciones o influencias en el ejercicio de la función jurisdiccional.

344. La Relatora Especial considera conveniente recordar al estado de Guatemala, las recomendaciones formuladas por su antecesor tras su visita al país, así como invitar al Gobierno a tomar las acciones necesarias para garantizar la transparencia, objetividad, idoneidad en los procesos de elección de magistrados de los Altos Tribunales y asegurar la independencia de la función jurisdiccional.

345. Con la finalidad de subsanar las deficiencias del sistema de justicia en el país, invita la Relatora al gobierno de Guatemala, a dotar de claridad los procesos de elección de los juristas que ocuparán los cargos más altos de las instancias judiciales.

## Honduras

### Comunicaciones enviadas

346. El 24 marzo de 2010, el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, junto con la Relatora Especial sobre la independencia de magistrados y abogados, enviaron una carta de alegación señalando a la atención urgente del Gobierno la información recibida en relación con el **Decreto de amnistía aprobado por el Congreso Nacional de Honduras en 26 de enero de 2010.**

347. Conforme a la información recibida, el Congreso aprobó el Decreto No. 02-2010, el cual otorga una amnistía general para los delitos políticos y delitos comunes conexos ocurridos durante el período del 1 de enero de 2008 al 27 de enero de 2010. Los delitos incluidos en el Decreto son: traición a la patria; delitos contra la forma de gobierno; terrorismo y sedición. Del mismo modo, el decreto dispone la extensión de la amnistía a los siguientes delitos comunes conexos: desobediencia, abuso de autoridad y violación de los deberes de los funcionarios, usurpación de funciones y delitos contra el ejercicio de los derechos garantizados por la constitución. Se observa con preocupación la inclusión en el Decreto del delito de abuso de autoridad, debido a que una amplia interpretación de este delito pudiera otorgar amnistía a presuntos perpetradores de violaciones de derechos humanos, incluidas las detenciones arbitrarias, en las que habría habido un uso excesivo de la fuerza y malos tratos, sin que estas constituyan delitos políticos.

348. Es también preocupante que el tiempo abarcado por el decreto es de más de dos años, lo cual supera por un amplio margen el período en el que ocurrió el golpe de Estado. A pesar de que se reconoce que el objetivo del Decreto es contribuir a la paz y a la reconciliación nacional, el vasto margen de tiempo hace imposible que víctimas de violaciones de derechos humanos ocurridas con anterioridad al golpe de Estado puedan tener acceso a la justicia y fomenta la impunidad.

349. También se recibió información sobre la decisión de la Corte Suprema de Justicia de otorgar el sobreseimiento a seis militares de alto rango, quienes habrían sido acusados de abuso de autoridad por la detención y expulsión del antiguo Presidente Manuel Zelaya en junio de 2009. La Corte Suprema habría justificado la decisión bajo el argumento de que la actuación de los militares había sido en defensa de la democracia hondureña y en protección de las vidas de las personas.

350. Se exhortó al Gobierno a buscar una clarificación sobre los hechos expuestos, a fin de asegurar que los derechos de las víctimas de violaciones de derechos humanos, incluida la tortura y los tratos o penas crueles, inhumanos o degradantes, ocurridas durante el período abarcado por el Decreto de amnistía sean protegidos de conformidad, entre otros, a la Declaración Universal de los Derechos Humanos, el Pacto Internacional de Derechos Civiles y Políticos, la Declaración sobre la Protección de todas las Personas contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes y la Convención contra la Tortura.

#### **Comunicaciones recibidas**

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

#### **Comunicaciones enviadas**

352. El 21 de mayo de 2010, la Relatora Especial sobre la independencia de magistrados y abogados, la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, de manera conjunta enviaron un llamamiento urgente haciendo referencia a su comunicación de fecha 16 de noviembre de 2009 en la que expresaron su preocupación en relación con los **actos de hostigamiento e intimidación en contra de magistrados, defensores públicos y demás auxiliares de justicia**. En particular, se expresaba preocupación sobre el hecho que la Corte Suprema de Justicia de Honduras habría ordenado procesos disciplinarios, traslados forzosos, y otras acciones que se considera de intimidación y hostigamiento contra varios jueces y funcionarios que se habrían manifestado, de distintas formas legales, contra la destitución del ex presidente Manuel Zelaya.

353. En la misma comunicación se solicitaban algunas clarificaciones con respecto a los mecanismos para garantizar los principios de estabilidad e inamovilidad de los jueces y la manera en la cual se asegura en Honduras que en el curso de los procesos disciplinarios en contra de los jueces se respeten las garantías mínimas del derecho a un proceso justo.

354. A la fecha, no se había recibido respuesta alguna a la mencionada comunicación. Por ello, los Relatores Especiales reiteraron su preocupación respecto a nueva información recibida. Según la misma, el pasado 5 de mayo, el pleno de la Corte Suprema de Justicia habría conocido de los expedientes de remoción de cinco funcionarios que fueron -entre otros- objeto del llamamiento urgente de fecha 16 de noviembre de 2009, a saber: **Luis Alfonso Chavez de la Roca**, Juez contra la violencia doméstica en San Pedro Sula; **Ramón Enrique Barrios**, Juez de Sentencia en San Pedro Sula; **Guillermo López Lone**, Juez de Sentencia de San Pedro Sula; **Osman Fajardo Morel**, Defensor Público de San Pedro

Sula; y **Tirza Flores Lanza**, Magistrada de la Corte de Apelaciones Penal de San Pedro Sula. De acuerdo a la información recibida, la Corte Suprema habría acordado durante dicha sesión la remoción de estos funcionarios. Esta decisión habría sido ratificada en el Pleno de la Corte Suprema el 13 de mayo.

355. Según la información recibida, a los jueces Guillermo López y Luis Alfonso Chévez, así como al Defensor Público Osman Fajardo, se les habría atribuido haber participado en manifestaciones contra el golpe de Estado; al juez Ramón Enrique Barrios lo habrían cuestionado por haber publicado un artículo en un periódico en el que objetaba, con argumentos jurídicos, la posición de la Corte Suprema de denominar como sucesión constitucional a la destitución del ex-Presidente Manuel Zelaya. Finalmente, a la magistrada Flores se le habría sancionado por haber presentado un recurso de amparo constitucional a favor del ex-Presidente Zelaya y otros funcionarios.

356. Se informó también que todos los funcionarios objeto de remoción serían miembros de la Asociación de Jueces para la Democracia, organización que habría expresado públicamente su posición con respecto a la crisis política del año pasado y cuyos miembros habrían participado activamente en la interposición de diversos recursos judiciales al respecto.

357. Se expresó temor porque la sanción que se impuso a los jueces no sólo les afecta personalmente sino que puede tener un efecto intimidatorio respecto a los otros miembros del gremio en el sentido de que se abstengan de manifestar opiniones diferentes de aquellas expresadas por las autoridades actuales. Esto representaría un ataque inadmisibles contra la independencia de la judicatura. Finalmente, se subrayó que la creación de un clima de temor en el Poder Judicial y en los abogados puede debilitar el estado de derecho y obstruir la justicia.

#### **Comunicaciones recibidas**

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

#### **Comunicaciones enviadas**

359. El 19 de noviembre de 2010, la Relatora Especial sobre la independencia de magistrados y abogados, la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y, enviaron un llamamiento urgente con relación a la situación de **varios abogados y trabajadores de la organización Asociación para una Sociedad mas Justa (ASJ)**, los cuales trabajan defendiendo los derechos y libertades fundamentales de sectores desfavorecidos de la población hondureña, incluyendo casos de derechos laborales.

360. Según las informaciones recibidas, el 21 de septiembre de 2010, una abogada de ASJ habría sido amenazada por empleados de la Secretaría del Trabajo mientras se encontraba realizando labores de investigación en la misma Secretaría. Dichos empleados habrían advertido a la abogada de que el Sub-Secretario de la Secretaría de Trabajo y Seguridad Social, antiguo gerente de la compañía “Seguridad Técnica de Honduras” (SETECH), estaría muy interesado en su investigación y que debería tener cuidado con lo que estaba haciendo.

361. Posteriormente, el día 19 de octubre de 2010, la misma abogada amenazada en septiembre, habría sido víctima de un secuestro en la ciudad de Tegucigalpa por parte de dos hombres armados los cuales la habrían obligado a introducirse en un taxi. Una vez en el vehículo, los individuos habrían intercambiado armas de fuego y habrían comentado entre ellos: “Sabes que nos pagaron para ejecutarla, tenemos que hacerlo”. Después, se habrían dirigido a la abogada y le habrían preguntado: “¿Trabajas para ASJ? ¿Quién te paga?”

¿Cuánto te paga? ¿Estás investigando a SETECH?” Sin embargo, 40 minutos después de haberla retenido, los dos hombres la habrían dejado bajar del vehículo cerca de unos grandes almacenes.

362. SETECH es una empresa de seguridad, la cual fue demandada en 2006 por sus trabajadores por incumplimiento de la normativa laboral. ASJ y el abogado Dionisio Díaz García estaban trabajando en uno de los casos cuando el Sr. Díaz García fue asesinado el 4 de diciembre de 2006 después de recibir amenazas de muerte. El resultado de las investigaciones y del juicio por el asesinato del abogado Díaz García resultó en una condena a un antiguo guardia de seguridad de SETECH así como a un agente de la Oficina Nacional de Investigación Criminal. Tras la muerte del Sr. Díaz García, el 20 de diciembre de 2006, la Comisión Interamericana de Derechos Humanos otorgó medidas cautelares a cuatro trabajadores de ASJ. Según la información recibida, después del asesinato del Sr. Díaz García, ASJ habría suspendido el acompañamiento legal de los trabajadores de SETECH.

363. Según informes recibidos, el día 3 de noviembre, otra abogada de ASJ habría recibido amenazas por parte de dos hombres desconocidos en motocicleta mientras circulaba en su vehículo particular en un transitado boulevard de la ciudad de Tegucigalpa. Estos dos hombres se habrían acercado a la ventanilla del conductor del vehículo de la abogada y le habrían dicho: “Ten cuidado con Transformemos Honduras y ASJ” al tiempo que mostraban un arma de fuego. Transformemos Honduras es una asociación de la cual forma parte ASJ y que trabaja investigando y denunciando irregularidades y corrupción en los sistemas educativo y sanitario de Honduras.

364. Los sucesos relatados habrían sido puestos en conocimiento de la Fiscalía Especial de Derechos Humanos, así como de la Secretaria de Estado de Seguridad, con el fin de solicitar las medidas necesarias para garantizar la seguridad de los abogados de ASJ. Según la información recibida, hasta el momento no habrían sido adoptadas medidas de protección para los trabajadores de ASJ amenazados recientemente. En este sentido, tampoco se habría visto reforzada la protección otorgada a varias personas de la citada asociación en virtud de la medida cautelar de la Comisión Interamericana de Derechos Humanos de 20 de diciembre de 2006.

365. Se expresó grave preocupación por la integridad física y psicológica de los abogados y trabajadores de la Asociación para una Sociedad más Justa (ASJ) así como por las alegaciones de que los sucesos arriba mencionados pudieran estar relacionadas con sus actividades de promoción y protección de los derechos humanos, en particular con sus labores de investigación en casos relacionados con las actividades de la empresa de seguridad SETECH. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en Honduras.

#### **Comunicaciones recibidas**

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

#### **Comunicaciones enviadas**

367. El 16 de febrero de 2011, la Relatora Especial sobre la independencia de magistrados y abogados, y el Presidente 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, enviaron un llamamiento urgente señalando a la atención del Gobierno la información recibida con relación a nuevas amenazas dirigidas a abogados que trabajan para la Asociación para una sociedad más Justa (ASJ).

368. Una vez más, se hizo mención al Sr. Dionisio Díaz García, quien trabajaba como abogado en la ASJ y fuera asesinado a disparos el 4 de diciembre de 2006; se recordó que al momento de su muerte, representaba a un grupo de ex-empleados de la empresa de seguridad privada SETECH. Con posterioridad, sus asesinos fueron detenidos y condenados. Uno de ellos era un ex-guardia de seguridad que había trabajado para SETECH. Desde entonces, otros miembros de la ASJ habrían recibido amenazas y desde octubre de 2010, abogados de la ASJ habrían sido víctimas de nuevas amenazas.

369. Igualmente, se hizo referencia a los llamamientos urgentes conjuntos dirigidos al Gobierno, el primero del 13 de octubre de 2006 del Relator Especial sobre la independencia de magistrados y abogados y del Representante Especial del Secretario-General para los defensores de los derechos humanos; otro del 5 de diciembre de 2006 del Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio de los pueblos del derecho a la libre determinación y del Representante Especial del Secretario-General para los defensores de los derechos humanos; otro del Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio de los pueblos del derecho a la libre determinación y del Representante Especial del Secretario-General para los defensores de los derechos humanos con fecha de 12 de diciembre 2006; otro del Relator Especial sobre la independencia de magistrados y abogados del 22 de diciembre de 2006; otro fechado del 11 de enero de 2007 del Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio de los pueblos del derecho a la libre determinación y del Representante Especial del Secretario-General para los defensores de los derechos humanos; otro con fecha de 31 de mayo de 2007 del Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio de los pueblos del derecho a la libre determinación y del Relator Especial sobre la independencia de magistrados y abogados y del Representante Especial del Secretario-General para los defensores de los derechos humanos; y por último, otro del día 19 de noviembre de 2010 del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, de la Relatora Especial sobre la independencia de magistrados y abogados y del Representante Especial del Secretario-General para los defensores de los derechos humanos. Al respecto, solo se ha recibido una respuesta del Gobierno, con fecha del 6 de febrero de 2007.

370. Según la información recibida, el 31 de enero de 2011 a las 17:50 horas, una abogada de la ASJ habría recibido un mensaje de texto en su teléfono móvil, enviado anónimamente desde Internet, el cual decía: “Deja de meter la nariz donde no debes”. Supuestamente también decía que otros dos abogados de la ASJ habrían sido advertidos previamente. Como se mencionó en el llamamiento urgente de fecha 19 noviembre de 2010, los dos abogados habrían sido amenazados por hombres desconocidos con armas de fuego el año pasado. Uno de ellos habría sido secuestrado el 19 de octubre de 2010 y habría escuchado mencionar el nombre de SETECH (ahora llamado “Gecko Holdings”) durante los 40 minutos de cautiverio.

371. Antes del secuestro, la misma abogada habría recibido en septiembre 2010 varias advertencias por parte de empleados del Ministerio del Trabajo según las cuales el vicepresidente del Ministerio de Trabajo (un ex-director del SETECH) habría mostrado interés en su trabajo de investigación y que debería tener cuidado.

372. Se informó también que algunas quejas sobre estas amenazas habrían sido presentadas, pero ninguna investigación referente a estos incidentes habría sido realizada.

### Comunicaciones recibidas

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

### Observaciones de la Relatora Especial

374. La Relatora Especial lamenta que, en el momento de finalizar este informe, no se había recibido respuesta a las cuatro comunicaciones enviadas durante el periodo del presente informe ni tampoco a sus comunicaciones enviadas en el periodo anterior. La Relatora Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato es por ello que insta al Gobierno de Honduras a que le proporcione una respuesta acerca de los casos mencionados.

375. Ahora bien, previo reconocimiento de la situación excepcional que atraviesa el estado de Honduras. Para la Relatora Especial es importante manifestar su preocupación frente a varias situaciones; en primer lugar, por la impunidad normativa y estructural que pudiera fomentarse con el Decreto No. 02-2010, que otorga una amnistía general para los delitos políticos y delitos comunes conexos ocurridos durante el período del 1 de enero de 2008 al 27 de enero de 2010, la Relatora desea recordar que bajo ninguna circunstancia debe impedirse la investigación y sanción de quienes sean responsables de la comisión de violaciones a los derechos humanos. En segundo lugar, la Relatora Especial considera importante señalar que, la independencia del poder judicial es un elemento fundamental para garantizar el Estado de Derecho, por ello manifiesta su preocupación frente a la inobservancia que pueda llegar a existir a los principios básicos que aseguran la independencia de la judicatura, recuerda que a la luz de los mismos puede ser garantizado que los procedimientos judiciales sean desarrollados conforme a derecho. Además, desea subrayar que los jueces, y todos los funcionarios encargados de la administración de justicia, deben gozar de las libertades de expresión, creencia, asociación y reunión; que la inamovilidad de los jueces debe ser garantizada; y que para el caso de acusaciones o quejas contra aquéllos, así como para proceder a la suspensión o separación del cargo como medida disciplinaria por los actos desplegados en el ejercicio de sus funciones, se deberá substanciar un proceso con las debidas garantías. Finalmente, para la Relatora Especial, es importante recordar, la obligación estatal de garantizar a los abogados el ejercicio de sus funciones profesionales, sin actos de intimidación, hostigamiento, injerencias o amenazas y, por ende, en caso de que alguna de esas situaciones tenga lugar, como resultado de su ejercicio profesional, es necesario garantizarles su seguridad personal.

## India

### Communication sent

376. On 29 July 2010, the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the situation of **Mr. Mian Abdul Qayoom**, President of the Jammu and Kashmir High Court Bar Association, Srinagar, and **Mr. Ghulam Nabi Shaheen**, General Secretary of the Bar Association.

377. According to the information received, on 7 July 2010, the house of Mr. Mian Abdul Qayoom was allegedly raided by the police. He was reportedly arrested under the Jammu and Kashmir Public Safety Act of 1978 (PSA), which allows for detention of suspects for up to two years without charge or trial, and taken to Hiranagar Jail in Jammu. On 20 July 2010, a first hearing took place and there was a request to transfer Mr. Mian Abdul Qayoom to Srinagar Central Jail, which was reportedly denied. Mr. Mian Abdul Qayoom is accused

of political activities in support of secession within his role in the Bar Association and of instigating mass protests. A next hearing is scheduled for 29 July 2010.

378. On 18 July 2010, Mr. Ghulam Nabi Shaheen was allegedly arrested and taken to the District Jail in Rajouri. He is reportedly being accused under the PSA of having organized public demonstrations calling for the release of Mr. Mian Abdul Qayoom.

379. It is alleged that these detentions follow the legal assistance provided by Mr. Mian Abdul Qayoom and Mr. Ghulam Nabi Shaheen to individuals arbitrarily detained under the PSA as well as their work on alleged human rights violations including enforced disappearances in Kashmir.

380. Concern was expressed that these arrests and detention might have been related to the activities of Mr. Mian Abdul Qayoom and Mr. Ghulam Nabi Shaheen in defence of human rights.

#### **Communication received**

381. In a letter dated 6 December 2010, the Government informed that the subjects of the appeal, who are involved in secessionist activities as also other acts highly prejudicial to the security of the state, were arrested following due procedure as laid down by the law and produced before the court. The matter is *sub judice*.

#### **Comments and observations of the Special Rapporteur**

382. The Special Rapporteur thanks the Government for the response was sent to the urgent appeal dated 29 July 2010. However, she regrets the lack of detailed information on a number of issues raised in the communication, notably about the legal basis for the arrest, detention and prosecution of the persons named above and how they comply with international norms and standards, as set forth *inter alia* in the International Covenant on Civil and Political Rights. She would appreciate a substantive response to the outstanding questions.

383. With regard to the concern that the detention of the two subjects of the appeal may be linked with the legal assistance they have provided to individuals arbitrarily detained, she wishes to underline the importance to guarantee the rights of lawyers to freely assist their clients and exercise their professional functions. To this end, the Special Rapporteur reiterates the importance of taking into account the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, aimed at assisting States to protect and ensure the proper role of lawyers.

**Responses to communications sent earlier** (for ease of reference the communications sent are also reproduced below)

#### **Communication sent**

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

385. According to the information received:



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

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

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

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

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

391. During a hearing to remand the detainees into custody on 1 February 2010, a bail application was filed on behalf of Mr. Singh Rawat. The hearing was held before Judicial Magistrate No. 5, Mr. Mhendra Dabi, as the presiding officer of the original Jurisdictional Court No 4, Mrs Neelam Sharma, was on leave. Mr. Mhendra Dabi refused Mr. Singh Rawat's bail application and remanded the detainees into custody until 11 February 2010.

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

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

### **Communications received**

394. In a letter dated 20 April 2010, the Government acknowledged receipt of the communication and that it would have it examined by the competent authorities.

395. In a letter dated 9 December 2010, the Government responded to the communication dated 5 February 2010 as follows: The Permanent Mission of India to the Office of the United Nations and other International Organisations in Geneva has the honour to inform that the initial investigation shows that the subject was arrested as per procedure laid down by the law. The matter is *sub judice*.

### **Comments and observations of the Special Rapporteur**

396. The Special Rapporteur thanks the Government for its response. She notes that the matter is under judicial consideration. However, she regrets the absence of detailed information on any investigation and judicial or other inquiries carried out in relation to the arrest and detention of the lawyer Devi Singh Rawat. In light of the allegations and concern raised in the communication that Mr. Singh Rawat was arrested in relation to the violence in Palra village, in which he was not present at the time of the incident and with which he reportedly was not connected in any way, she calls on the Government to provide substantive information on the accuracy of these allegations, as requested in the communication.

397. The Special Rapporteur further expresses concern that the arrest and detention of Mr. Singh Rawat may be linked with his work against torture and for speaking out against violations of human rights by the authorities. Moreover, she regrets the absence of information on any investigations carried out in relation to the allegations of ill-treatment by police officers. She calls on the Government to provide substantive information in this regard at the earliest possible date.

## **Indonesia**

### **Communication sent**

398. On 19 July 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the **detention of Fredy Akihary, Leonard Hendriks, Samuel Hendriks, Piter Johannes, Aleks Malawauw, Buce Nahumury Ferdinand Arnold Rajawane, Johny Riry, Mercy Riry, Abraham Saiya, Ferjon Saiya, Johan Saiya, Jordan Saiya, Pieter Saiya, Ruben Saiya, Stevi Saiya, Marthen Saiya, Yefta Saiya, Yohanis Saiya, Johny Sinay, Melkianus Sinay, Yosias Sinay, Johan Teterissa, all political activists, as well as Flip Malawau, Barce Manuputty, Yutus Nanarian, Petrus Rahayaan Arens Arnol Saiya, Piter Elia Saiya, Elia Sinay and Alexander Tanate.**

399. On 29 June 2007, 23 political activists, mostly farmers, performed a traditional Maluku war dance in front of the President of Indonesia and other officials, during a ceremony to mark the 14th anniversary of National Family Day in Independence Field, Ambon, Maluku Province. At the end of the dance, they unfurled the Benang Raja flag, the pro-independence symbol of South Maluku. The political activists had not been registered as part of the ceremony, and were immediately arrested by approximately 20 police and presidential guards.

400. During the arrest and in the police vehicle, some of the activists were punched and beaten with rifle butts. They were transferred between police stations, including the

regional police station (Polda, Polisi Daerah), the district police station (Polres, Polisi Resort) and the police mobile brigade (Brimob, Brigade Mobil Tantai base). Most of the detainees were subjected to torture and ill-treatment in police custody. They were forced to crawl on their stomachs over hot asphalt, billiard balls were forced into their mouths, they were whipped with electric cables, beaten on the head with rifle butts until their ears bled, and shots were fired close to their ears. Afterwards, while they were still bleeding, they were thrown into the sea and dragged out. It has been reported that Special Detachment 88 officers were responsible for the most severe assaults.

401. On the same day, nine other people were arrested for having helped organize the event or for having watched it. Eight of them are serving sentences of between six and 12 years imprisonment. Flip Malawau, Barce Manuputti, Petrus Rahayaan, Arens Arnol Saiya, Elia Sinay, Alexander Tanate and Johan Teterissa were all subjected to beatings with hard objects, including rifle butts, during their pre-trial detention.

402. All of the detainees were denied contact with the outside world for 11 days. Once the trials began, the detainees were transferred to the Waiheru detention centre, where some were coerced into signing statements waiving their right to a lawyer. Those who had lawyers assigned by the State were advised to plead guilty and waive their right to appeal. Additionally, some of the detainees did not appear before a judge and were nonetheless convicted in absentia. They were all sentenced to between seven and 20 years of imprisonment. No investigation has yet been launched into the allegations of torture and ill-treatment.

403. On 10 March 2009, 11 of the detainees were transferred to correctional facilities in Java, more than 1,000 kilometres away from their families. It is believed that neither the detainees nor their families were informed of their transfer. Lawyers from the Malang branch of the Legal Aid Institute (Lembaga Bantuan Hukum, LBH) Surabaya have been seeking permission to visit three of them, Leonard Hendricks, Johan Teterissa and Abraham Saiya, while in detention in Lowokaru Prison in Malang, East Java. On 12 February 2010, LBH received a copy of a letter from the East Java regional office of the Ministry of Justice and Human Rights to the Director General of Prisons in Jakarta, informing them of LBH's application and asking the Director General to coordinate with the Foreign Affairs Ministry. They have not heard either from the East Java office of the Ministry of Justice and Human Rights or the Director General of Prisons since then.

404. Particular concern is expressed over Mr. Teterissa, who has not received medical treatment since the arrest and ill-treatment. He has a high fever, is in constant pain and cannot see properly. The prison authorities have denied his request for external medical treatment, and a doctor who went to see him on 15 July was also turned away. It is also believed that Mr. Teterissa may be denied access to sufficient food and clean water in prison.

#### **Communication received**

405. At the time this report was finalized, no response to this communication had been received.

#### **Comments and observations of the Special Rapporteur**

406. The Special Rapporteur is concerned at the absence of an official reply to the communication dated 19 July 2010 and calls upon the Government of Indonesia to provide at the earliest possible date a detailed substantive answer to the above allegations. She remains particularly concerned at the allegations that many of the individuals mentioned above have had no access to lawyers, no possibility to challenge the legality of their

detention and that no investigation has yet been launched into the allegations of torture and ill-treatment.

## **Iran (Islamic Republic of)**

### **Communication sent**

407. On 22 March 2010, the Special Rapporteur sent, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, an urgent appeal concerning **Heshmatollah Tabarzadi** (“Heshmat”), a journalist and leader of the Democratic Front of Iran, a banned political party.

408. Mr. Heshmatollah Tabarzadi was arrested on 27 December 2009 in Tehran, by intelligence officers from the Revolutionary Guard. Upon arrest, his computer, phone book, photo albums, video tapes, fax and mobile phone were confiscated. It is believed that Mr. Tabarzadi’s arrest may be as a result of an article which was published on 17 December in a United States-based newspaper, and which stated that “if the Government continues to opt for violence, there very well may be another revolution in Iran...”.

409. Mr. Tabarzadi has been accused of “insulting the Supreme Leader”, “insulting the Islamic Republic” and “acting against national security”. He has not had access to a lawyer, but has been able to receive visits from his family and to talk to them on the phone, albeit while being monitored by the police administration. During his interrogation by intelligence officers, Mr. Tabarzadi was blindfolded, beaten and threatened with the death penalty.

410. Concern is expressed that the arrest and detention of Mr. Tabarzadi may form part of an attempt to stifle his rights to freedom of opinion expression, peaceful assembly, and participation in the conduct of public affairs, directly or through freely chosen representatives, in the country. In light of the above allegations of threats and ill-treatment, further concern is expressed for the physical and psychological integrity of Mr. Tabarzadi.

### **Communication received**

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

### **Communication sent**

412. On 27 April 2010, the Special Rapporteur sent an allegation letter concerning the alleged recent **alleged recent establishment of a “special court” at Evin prison**.

413. According to the information received, on 7 March 2010, Tehran’s General Prosecutor, Mr. Abbas Jafari Dolatabadi, informed on the creation of a special court inside Evin prison in order - inter alia - to expedite investigations and reduce costs. This court deals with the case files of many political activists and other prisoners whose cases are in an indeterminate status.

414. Lawyers have been permitted virtually no contact with their clients arrested in the aftermath of the Iranian elections who are facing trial in Evin court prison. Access to their files was reportedly also blocked. Lawyers have no access to the Evin prison court and, as a result, cannot duly perform their professional duty.

415. It is also reported that judges are now housed in an environment that is under the oversight of the Ministry of Intelligence. During preliminary investigations, case judges would only receive information from intelligence officers. Suspects’ lawyers are not

entitled to meet with their clients, thus rendering their effective defense virtually impossible. According to the source, the creation of a special court for political prisoners within the confines of Evin prison would be in violation of Iranian Constitution, as this court would not be a competent court within the meaning of article 34 of the Constitution.

#### **Communications received**

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

#### **Communication sent**

417. On 29 July 2010, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal to the government concerning the situation of **Mr. Mohammad Mostafaei**, a human rights lawyer, and his family.

418. According to the information received, on 21 July 2010, Mohammad Mostafaei was issued with a summons requiring him to go to a branch of the Prosecutor's Office in Evin Prison. He reportedly went there on 24 July, was questioned for about one hour and then was released. Later, however, he received a further summons by telephone. The same evening, his wife, **Ms. Fereshteh Halimi**, and her brother, **Mr. Farhad Halimi**, were arrested and have been detained since then. At the time this communication was sent, it was reported that Mohammad Mostafaei's current whereabouts are unknown. On the evening of 24 July he reportedly wrote on his *Facebook* account: "it is possible they will arrest me".

419. Mohammad Mostafaei is a human rights lawyer who has taken up cases of juvenile offenders, those convicted of a capital offence committed while under the age of 18; men and women facing stoning and other cases, including of political prisoners.

420. Serious concern was expressed about the fact that his questioning by the authorities and the arrest of his wife and brother in law may be linked to his activity in defence of human rights and in particular to his work as defence counsel in many human rights cases, including the case of Ms. Sakineh Mohammadi Ashtiani, a woman who was sentenced to death by stoning for alleged adultery (and whose sentence is currently on stay).

#### **Communication received**

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

#### **Communication sent**

422. On 12 August 2010, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an urgent appeal concerning **Ms. Sarah Emily Shourd**.

423. Ms. Sarah Emily Shourd was arrested on 31 July 2009, together with two companions, by Iranian border guards near the Ahmed Awa waterfall resort area, Iraq. They were forced to cross the border to Iran, and Ms. Shourd was taken to Evin Prison, where she is still being held. Since her arrest, Ms. Shourd has been held in solitary confinement and without any charges brought against her. She has only received one family visit and she has had no access to her lawyer. In addition, she suffers from a precancerous

condition on her cervix which needs to be monitored and treated, and she recently found a lump on her breast. However, she has only seen a doctor once since her detention.

424. Due to the extended detention in solitary confinement and lack of adequate medical attention, concern is expressed for the physical and psychological integrity of Ms. Shourd.

#### **Communication received**

425. By letter dated 7 October 2010, the Government indicated that they were detained by the border guards on charges of illegal entry and espionage. Their case and charges against them have been reviewed by the investigating judge and in view of the evidence obtained; a court order for remand detention was issued. The accused persons and their defense lawyers - Mr. Masood Shafie -protested the court order. The order by the court was upheld. All three accused persons have had access to defense lawyer and were able to meet their family. Moreover, Ms. Sara Shourd's remand detention was changed into a bail on Islamic compassionate grounds and after posting the bail, she was freed and returned to the United States.

#### **Comments and observations of the Special Rapporteur**

426. The Special Rapporteur welcomes the response to her communication dated 12 August 2010. She notes with appreciation that Ms. Shourd was freed and returned to the United States. However, she regrets the lack of information on the situation of Ms. Shourd's companions and calls upon the Government to provide information in this regard at the earliest possible date.

#### **Communication sent**

427. On 23 September 2010, the Special Rapporteur, jointly with the Working Group on Arbitrary Detention, Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning **Mr. Abdollah Momeni**, member and spokesperson of the Central Council of the Alumni Organization of University Students of the Islamic Republic of Iran (Sazeman-e Danesh Amookhtegan-e Iran-e Islami—Advar-e Tahkim-e Vahdat), an organization working toward the advancement of democracy and human rights. Mr. Momeni was the subject of communications sent on 12 July 2007, 31 July 2008 and 10 July 2009.

428. Mr. Abdollah Momeni has been detained at Evin Prison since his arrest in 2009. Upon arrest, he was beaten, punched and kicked by security officials. The officials then shackled his hands and feet and took him to Evin prison. Upon arrival and throughout the first interrogations, he was threatened with execution. He spent 86 days in solitary confinement, and 50 in incommunicado detention. Afterwards, he was transferred to wards 209 and 240, respectively where he was only allowed to go to the courtyard on six occasions during seven months. He was allowed a very short phone call to his family every two weeks, with the presence of his interrogator.

429. After spending two days in a cell in Section 109, where the carpet was covered with faeces, he was transferred to Section 240, under the authority of the Ministry of Intelligence. The cell measured 1.6 by 2.2 meters, forcing him to lie in one position the whole time.

430. During the lengthy interrogation sessions, he was forced to stand on one foot for long periods of time. Pressure was applied to his throat several times, leading to him losing consciousness. Afterward, he suffered from severe pain in the neck and throat, which made eating or drinking intolerable. The aim of the interrogations was to force him to confess to having had sexual relations with other men. When he did not reply what was expected from

him, he was forced to eat the interrogation forms. During the interrogations, Mr. Momeni was beaten, slapped, punched and kicked throughout the face and body on numerous occasions. He was also verbally insulted and threatened with rape. On one occasion, the interrogators forced his head down the toilet, forcing him to swallow feces.

431. Mr. Momeni was told by one of the interrogators that he should not request the services of a lawyer, and he was not allowed to appoint a private one. He refused the services of the public defender, who would have needed the approval of the interrogators. When he was presented before the court, he read the statement provided by the interrogators, as they had agreed to release him if he did so. At the meeting with the prosecutor, the interrogator was present, and Mr. Momeni did not mention the ill-treatment due to fear. In March 2010, he was released on bail, but was re-arrested soon after for failing to confess to further crimes demanded by the interrogators. He remains in detention in Evin prison.

432. In light of the serious allegations of torture and ill-treatment, concern is expressed for the physical and psychological integrity of Mr. Abdollah Momeni.

#### **Communication received**

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

#### **Communication sent**

434. On 29 September 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal regarding the situation of **Ms. Zeynab Jalalian**, who was sentenced to death for the offence of “enmity against God”. Information now made available to us indicates that during her trial two lawyers who sought to represent her were prevented from taking up her defence.

435. The case of Ms. Jalalian has previously been brought to the attention of the Government in a communication dated 23 April 2010. In the communication concern was raised with regard to the compatibility of the imposition of the death penalty on the charge of moharebeh with international law obligations accepted by the Islamic Republic of Iran.

436. Concerns raised in previous communications were reiterated. The Special Rapporteurs recalled that carrying out the execution of Ms. Zeynab Jalalian would be incompatible with the international obligations that the Islamic Republic of Iran has undertaken under various instruments which they have been mandated to bring to the attention of Governments.

#### **Communication received**

437. At the time this report was finalized, no response to this communication dated 29 September 2010 has been received. However, a response has been received on 18 March 2011 to the previous communication sent on 23 April 2010.

438. With regard to Ms. Zeinab Jalalian’s case, the Human Rights High Council of the Judiciary has approached all pertinent judicial authorities and courts. According to reports, Ms. Jalalian was charged with the following crimes: (1) violent armed rebellion against the system of the Islamic Republic of Iran; (2) membership in Pejak terrorist group; (3) possession and transportation of illegal firearms and military equipment; (4) propaganda against the state, and in favor of hostile groups.

439. Ms. Jalalian’s case was brought before Branch 1 of Kermansha’s Court of Islamic Revolution. Upon completion of all judicial processes, the court – by issuing verdict number 1403 dated 3 December 2008 – sentenced Ms. Jalalian to death. The verdict was

appealed by Ms. Jalalian and her counsel Mr. Faroborz Ensanumehr. As a result, the case received by Kermanshah appellate court; however by issuing verdict number 8809978324400157 dated 6 May 2009, the verdict of the previous court was upheld.

440. On behalf of Ms. Jalalian and in the context of Islamic mercy, a request for amnesty, or commutation of sentence was lodged with the judiciary's amnesty committee. The request is still under consideration. Also despite the gravity of the crime committed – which requires the culprit to be kept in prison – in difference to Ms. Jalalian's situation, she was incarcerated in Kermanshah's rehabilitation center. Statements otherwise are falsehoods and untrue.

441. Background information on Pejak terrorist group was also included by the Human Rights High Council of the Judiciary of the Islamic Republic of Iran.

442. In 1978, the Kurdistan Workers party (PKK) was established under the leadership of Abdolla Ojalan. The stated goal of the PKK was to establish an independent Marxist-Leninist Kurdistan. To promote itself, the group initially organized cultural programs geared towards Kurdish youth. However, it soon took up arms to forcefully work towards the establishment of an independent Kurdistan. Several governments reacted to this turn of events and tried to counter PKK's sabotage and terrorist campaign. Sometime later, the leader of the group, Abdollah Ojalan was arrested by Turkey. Ojelan's supporters responded to the news by protest rallies and plunging a number of Kurdish areas into a crisis. When PKK arrived in Iran, it initially engaged in a recruitment drive. Later, it expanded its activities and started to train members and establish a network of cells. Later still, PKK's local version, the 'Pejak' announced its inception and stated its goal as an armed campaign to overthrow the Islamic Republic of Iran. Pejak went to engage in a bloody campaign of bombings and terrorist attacks.

443. With regard to Pejak's ties with the PKK, most intelligence and military experts agree that PKK and Pejak differ in name only. This tactic is an effort to deflect international pressure and allow regional powers to be in contact with the group. This also allows the group to maintain offices in different countries of the region. The group's leaders and representatives have been trying to establish a distinction between Pejak and the PKK, and by doing so ward off protests by the Islamic Republic of Iran against PKK encroachment into Iran and the expansion of its terrorist campaign into Iranian territory.

444. There are scores of assassinations, bombings, grenade attacks, armed robberies, and extortion attempts in Pejak's record. To obtain its goals, the terrorist group does not hesitate to damage and destroy public and private property or injure and kill innocent bystanders.

445. After pressure by Turkey, the US State Department labeled PKK a terrorist organization; however, the same designation was given to Pejak, which is its offshoot. As a result, Pejak continues to receive supports from the US and other countries. Needless to say, international law prohibits states and others from supporting terrorist organizations.

#### **Comments and observations of the Special Rapporteur**

446. The Special Rapporteur thanks the Government for the response to the urgent appeal dated 29 September 2010. As noted in the communication, she wishes to stress that although the death penalty is not prohibited under international, it may only be imposed for the most serious crimes. The Special Rapporteur regrets that no information was provided on the compatibility of the imposition of the death penalty with international standards. Nevertheless, the Special Rapporteur appreciates the information provided by the Government according to which a request for amnesty or commutation of the sentence is under consideration. In this regard, the Special Rapporteur would greatly appreciate receiving information about the outcome of this request.



**Communication sent**

447. On 30 September 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the criminal case against **Mr. Mohammad Seifzadeh**, a lawyer and human rights activist.

448. According to information received, Mr. Seifzadeh has been charged under the Islamic penal code with founding the Defenders of Human Rights Centre. The centre was shut down by judicial authorities and its activities declared to be unlawful.

449. The case is being heard before the 15th Branch of the Revolutionary Court. The first court session was held on 13 September 2010; however the case was adjourned to a later date because the Prosecutor did not turn up.

450. Grave concerns were expressed that Mr. Mohammad Seifzadeh was being prosecuted under criminal law because of the exercise of his profession as a lawyer and human rights defender. While we do not wish to prejudge the accuracy of these allegations, we would like to seek clarification from the Government of the circumstances regarding the trial against Mr. Seifzadeh.

**Communication received**

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

**Communication sent**

452. On 7 October 2010, the Special Rapporteur, together with the the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding the sentencing of **Mr. Isa Saharkhiz**, a pro-reform movement journalist and member of the Association of Iranian Journalists and of the Central Council of the Committee to Protect Press Freedom, and **Mr. Hossein Derakhshan**, a blogger with dual Iranian-Canadian citizenship who posted instructions on his blog in Persian on how to set up a blogging site and begin writing online comments.

453. Concerns regarding the case of Mr. Isa Saharkhiz have been communicated to the Government on numerous occasions, including through urgent appeals dated 11 February 2010 and 1 April 2010 by the Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and the Chair-Rapporteur of the Working Group on Arbitrary Detention. We regret that we have not yet received a reply from the Government to these communications. Mr. Isa Saharkhiz's case has also been considered by the Working Group on Arbitrary Detention and has been deemed arbitrary in its opinion adopted on 6 May 2010 (Opinion No.8/2010).

454. According to new information received, on 27 September 2010, the authorities of the Islamic Republic of Iran reportedly informed the lawyer of Mr. Isa Saharkhiz that he had been sentenced to three years in prison, a five-year ban on political and journalistic activities, and a one-year travel ban. Mr. Saharkhiz was detained in July 2009 shortly after the disputed presidential elections and was charged with "insulting the Supreme Leader" and "propagating against the regime". Mr. Saharkhiz's arrest came two days after he printed articles criticizing the Iranian Government. He has on multiple occasions given speeches on the importance of the freedom of the press and of human rights, often

criticizing the Government. According to the information received, he was arrested on account of participating in Karroubi's political campaign for the recent presidential elections and for speaking out against the Government.

455. On 29 September 2010, Mr. Hossein Derakhshan was convicted by Branch 15 of the Revolutionary Court of cooperating with hostile States, propaganda against the system, propaganda in favour of counter-revolutionary groups, insults to the holy sanctities, and set-up and management of vulgar and obscene websites. He was sentenced to 19-and-a-half years in prison, a five year ban on political and journalistic activities and repayment of receive funds of 30,750 Euros, US\$ 2,900, and UK£ 200 British Pounds. It is unclear what the funds were allegedly for. Additionally, it has been reported that his lawyer has not been given a copy of the verdict and his family was not informed of his conviction until it was published in the news.

456. Mr. Derakhshan was detained at his family home in Tehran on 1 November 2008 in connection with comments he allegedly made about a cleric, spent over a year without charge and in solitary confinement for nine months, and has been prevented from receiving visits from his family and lawyers. He has 20 days in which to lodge an appeal and is believed to be held in Evin Prison in Tehran.

457. Serious concern is expressed regarding the harsh sentences against Mr. Isa Saharkhiz and Mr. Hossein Derakhshan for non-violent expression of their opinions and views, as well as their continued detention. Further concern is reiterated that their prosecution may be part of a broader pattern to intimidate other journalists and bloggers.

#### **Communication received**

458. In a letter dated 7 October 2010, the Government indicated that Mr. Saharhkiz was in charge of foreign news service of one of the presidential candidates (Mr. Karoobi) and played an effective role after the election in propagating fictitious news, attributing fabricated allegations to high-ranking officials of the country, disturbing public mind and provoking unrest. He was arrested on the basis of a warrant, and after completion of investigations and collection of evidence; the investigating judge on 3 July 2009 remanded the accused in light of previous records of commission of numerous offences.

459. On 14 December 2009, an indictment was issued charging him for his actions in waging propaganda against the Islamic Republic of Iran, insulting the high-ranking officials of the country and disturbing public mind, his case was sent to the court – Branch 15 – and the first hearing was held on 18 July 2010. He has four defense lawyers – Ms. Nasim Ghnavi, Sepanta Jafari, Nasrin Sotoodeh, and Mr. Mohammad Reza Afghahi. Despite the factious claim concerning his lawyers not being able to have access to his dossier, according to our inquiries his defense lawyer – Mr. Faghili – came to the court and read his case on 2 Esdand 1388 and 14 Farvardin 1389. Moreover, the lawyers met their client number of times. Mr. Saharhkiz is serving his sentence in the general cell of Evin Prison and is in good health. In addition to having telephone contacts, his family visits him weekly. All claims concerning mistreatment of Mr. Saharhkiz in prison are rejected.

460. In a letter dated 16 February 2011, the Government provided information on the case of Mr. Hossein Derakhshan. In connection with his conviction, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has contacted all the pertinent judicial authorities and courts. According to reports, Mr. Hossein Derakhshan, son of Hassan, has been charged with: (1) insulting Islamic sanctities (*Hazrat Sedigh Tahereh*, PBUH); (2) insulting the Leaders of the country; (3) distribution of pictures and material intended to mock sanctities; (4) statements to the same effect; (5) distribution of obscene and pornographic material in cyberspace; (6) insults against the President of the Islamic Republic of Iran; (7) propaganda against the system of the Islamic Republic of Iran; (8)

Cooperation with hostile states (namely the Zionist regime) by participating in anti-revolutionary conferences; (9) establishment of anti-revolutionary media.

461. Mr. Derakhshan was arrested on 3 November 2008. Sometime later his case was brought before Branch 15 of Tehran's Court of Revolution. During his trial, Mr. Derakhshan was defended by Dr. Mahdavi – his attorney. After the completion of the trial, the Court of Revolution found Mr. Derakhshan guilty and – based on articles 7, 47, 500, 508, 513, 514 and 609 of the Islamic Penal Code and article 10 of the illegal audio and visual activities act – condemned (verdict No. D/T/16192/88) the accused to 5 years of imprisonment in connection with offenses 1 and 3, also 5 years of imprisonment for offense 2, as well as 1 year of imprisonment for offense 4, also 6 months of imprisonment for offense 5, and 1 year of imprisonment for offense 6, and an additional 10 years of imprisonment for offense 7.

462. Mr. Derakhshan was also prohibited from involvement in the media (print and cyberspace) and the activities of political parties. He was also ordered by the court to deposit all funds received into a government account. Mr. Derakhshan and his attorney have the right to appeal the sentence.

#### **Comments and observations of the Special Rapporteur**

463. With regard to the case of Mr. Saharhkiz, the Special Rapporteur welcomes the response provided by the Government of the Islamic Republic of Iran, regarding the circumstances and reasons for the arrest and detention of Mr. Saharhkiz. Nevertheless, the Special Rapporteur regrets the absence of information on any investigations which may have been carried out in relation to the allegation of ill-treatment of Mr. Saharhkiz. Nor was information provided on the sentencing and its compatibility with international standards.

464. In respect of the case of Mr. Derakhshan, the Special Rapporteur notes with appreciation the clarification provided on the charges brought against the defender. However, no answer was provided as to the compatibility of the sentence of 22,5 years of imprisonment imposed upon the Mr. Derakhshan and international standards.

#### **Communication sent**

465. On 12 November 2010, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the criminal conviction and disbarment of **Mr. Mohammad Seifzadeh**, a lawyer and co-founder of the Defenders of Human Rights Centre (DHRC).

466. The Special Rapporteurs have previously brought to the attention of your Excellency's Government the case of Mr. Mohammad Seifzadeh in a communication dated 30 September 2010, in which concern was raised that Mr. Seifzadeh is being prosecuted under criminal law because of the exercise of his profession as a lawyer and human rights defender.

467. According to information received, on 30 October 2010, Branch 15 of Tehran's Revolutionary Court sentenced Mr. Seifzadeh to nine years in prison and a ten year ban from practicing law. He was found guilty of "creating and acting within an organization which aims at threatening national security". The Special Rapporteurs are informed that **Mr. Abdolfattah Soltani** and **Mr. Mohammad Ali Dadkhah**, two other co-founders of DHRC, are also being prosecuted under similar charges.

468. Mr. Seifzadeh's trial was held without a jury panel and behind closed doors. Further the Court refused Mr. Seifzadeh's request to summon and to declare as witnesses ten individuals who had issued the DHRC license at the time, including former members from

the cabinet of the then Interior Minister. The refusal was allegedly in violation of article 193 of the Iranian Criminal Procedure Code.

469. The Special Rapporteurs are informed that the disbarment of Mr. Seifzadeh by the judiciary violates Iranian legislation, which provides that "a lawyers' license can only be suspended by the disciplinary bodies of the bar associations."

#### **Communication received**

470. In a letter dated 8 February 2011, the Government responds to the communication summarized above. In connection with the conviction of a number of attorneys, including Mr. Mohammad Seifzadeh, the High Council of Human Rights of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. On the basis of information received from Tehran's court of Islamic Revolution, Mr. Mohammad Seifzadeh, son of Abdollah, has been charged with the following: (1) establishment of an illegal group, namely 'center for human rights defenders'; (2) propaganda against the system of the Islamic Republic of Iran.

471. After the completion of investigations and examination of the case and hearing of Mr. Seifzadeh and his defence attorney – Ms. Marzieh Nikara – branch 15 of Tehran's court of Islamic Revolution, through its verdict No. 309 dated 10 June 2010 as based on articles 47, 498, 500 of the Islamic Penal Code (IPC), sentenced Mr. Seifzadeh to eight years of imprisonment – including earlier detention. Also on the basis of article 19 of the IPC and as an additional *Ta'ziri* sentence (in Islamic jurisprudence/ *Figh'h* this term refers to sentences which carry variable levels of punishment, as determined by the law and the judge respectively) Mr. Seifzadeh has been prohibited from practicing law for ten years.

472. The sentence has been appealed and the case is being reexamined by branch 54 of Tehran's court of appeals. Subsequently, Mr. Seifzadeh has been released on bail.

#### **Comments and observations of the Special Rapporteur**

473. The Special Rapporteur thanks the Government for its response to the communication dated 12 November 2010. She welcomes the information that the case of Mr. Seifzadeh is being reexamined and that he has been released on bail. However, she regrets the absence of information on the nature of the criminal cases against Mr. Abdolfattah Soltani and Mr. Mohammad Ali Dadkhah, as requested in the communications and calls upon the Government to transmit substantive information on the criminal proceedings initiated against them.

#### **Communication sent**

474. On 19 November 2010, the Special Rapporteur on the independence of judges and lawyers sent an urgent appeal concerning the pattern of interference in the professional discharge of functions for lawyers.

475. The Special Rapporteur has received information on the four following trends (a to d):

476. There is a pattern of arresting defence lawyers which is allegedly aimed at preventing lawyers from discharging their functions.

477. On 13 November 2010, **Ms. Maryam Kiyani Ersi, Ms. Maryam Karbasi, Ms. Sara Sabaghian, Ms. Rosa Gharachurlo and Mr. Mohammad Hossein Nayyeri** were detained upon their return from Turkey. They were charged on grounds relating to national security and 'violating moral standards outside Iran.'

478. The Special Rapporteur is informed that previously on 8 July 2010, Ms. Sara Sabaghian was arrested and released a few days later. She is a member of the Iranian Bar Association's Committee for the Defence of Women and Children's Rights and her clients include Ms. Sakineh Mohammadi Ashtiani.

479. **Mr. Mohammad Olyaeifard**, a lawyer and board member of the Committee for the Defence of Political Prisoners in Iran, is currently serving a one-year prison sentence for allegedly speaking against the execution of one of his clients Mr. Behnoud Shojaee during interviews with international media. Mr. Olyaeifard has defended many prisoners of conscience, including independent trade unionists, as well as juvenile offenders.

480. **Mr. Abdolfattah Soltani** and **Mr. Mohammad Ali Dadkhah** were arrested after the Presidential elections of June 2009. They were later released on bail, the case against them is pending in court and if found guilty they may be imprisoned and eventually disbarred.

481. There is a pattern of intimidation and harassment, I have received information that some defence lawyers are under tax investigations and that the authorities freeze the lawyers' bank accounts and other financial assets. Such investigations I am informed can lead to a lawyer being disbarred.

482. The Special Rapporteur is informed that **Ms. Shirin Ebadi** has been subjected to a tax investigation and the authorities froze a bank account containing her Nobel Prize winnings allegedly in violation of Iranian law. Further **Ms. Nasrin Sotoudeh** is allegedly also being investigated.

483. Some lawyers have been barred from contesting for posts in the Iranian Bar Association on the basis of imputed political opinions and human rights activities. In 2008, **Mr. Mohammad Dadkhah, Mr. Hadi Esmailzadeh, Fatemeh Gheyraat and Abdolfattah Soltani**, all members of the Center for Human Right Defenders, were disqualified from standing for the Central Board of the Bar Association because of their activities as human rights defenders. This case was the subject of a communication dated 3 November 2008, to which your Excellency's Government is yet to reply.

484. Some defense lawyers have gone into exile. Information made available to me indicates that in July 2009, **Ms. Shadi Sadr** left the country after she was detained for 11 days. In July 2010, **Mr. Mohammad Mostafaei** was also forced to flee, after his involvement in the case of Ms. Sakineh Mohammadi Ashtiani. The Special Rapporteur is informed that the authorities arrested his wife and her brother in his place.

#### **Communication received**

485. At the time this report was finalized, no response to this communication had been received.

#### **Communication sent**

486. On 19 November 2010, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding the situation of **Ms. Nasrin Sotoudeh**, a lawyer and a prominent human rights activist. Ms. Nasrin has represented clients ranging from juvenile offenders facing the death penalty to Nobel Peace Laureate Ms. Shirin Ebadi. She has also spoken openly about alleged shortcomings in the rule of law and administration of justice in the Islamic Republic of Iran.

487. According to information received, on 28 August 2010, Ms. Nasrin Sotoudeh's house and office were searched by law enforcement authorities. On 4 September, Ms. Sotoudeh was arrested, and subsequently summoned to appear in court. Her trial reportedly started on 15 November 2010, during which she reportedly faces charges of acting against national security; gathering and colluding to disturb national security; and co-operation with a human rights body, the Centre for Human Rights Defenders, co-founded by Ms. Shirin Ebadi. Mr. Reza Khandan, Sotoudeh's husband, was reportedly not allowed to attend the court session but was able to talk to his wife for a few minutes afterwards. Ms. Sotoudeh's next court session is reportedly scheduled to be held on 24 November 2010.

488. Since her arrest, Ms. Sotoudeh has reportedly remained in solitary confinement in Evin Prison in Tehran, with only occasional contact with family members. On 3 November she met her two children and sister who reportedly found her in poor condition, having lost weight as a consequence of a hunger strike she had undertaken to protest against her arrest and the conditions of detention inside Evin prison. Ms. Sotoudeh has reportedly ended her hunger strike with the commencement of her trial on 15 November.

489. According to the information received, prior to her arrest, Ms. Nasrin Sotoudeh had been threatened with reprisals if she did not stop her human rights work. Her husband, Mr. Reza Khandan, also received threats urging him to stop his wife from defending her clients, including Ms. Ebadi.

490. Concern was expressed that the arrest and detention of Ms. Sotoudeh, and the threats against her husband, Mr. Reza Khandan, may be related to her legitimate activities in defence of human rights. Further concern was expressed for Ms. Sotoudeh's physical and psychological integrity while in detention.

#### **Communication received**

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

#### **Communication sent**

492. On 30 December 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the imminent execution and solitary confinement of **Mr. Habibollah Latifi**.

493. This case has been previously addressed by the Special Rapporteur on extrajudicial, summary or arbitrary executions in an urgent appeal to your Excellency's Government dated 13 October 2009. In this communication, the Special Rapporteur has raised concern as to the compatibility of the imposition of the death penalty on the charge of *moharebeh* (enmity against God) with international standards and obligations endorsed by the Islamic Republic of Iran. The charge was believed to relate to Mr. Latifi's membership of the PJAK (Free Life Party of Kurdistan), a forbidden armed group. The Special Rapporteur on extrajudicial, summary or arbitrary executions has also reiterated this concern in previous communications.

494. According to further information received, on 23 October 2007, Mr. Habibollah Latifi, a law student at Azad University, was reportedly arrested by security forces. Following his arrest, he was allegedly detained and interrogated by intelligence agents for more than four months prior to his transfer to Sanandaj prison. During the investigation process, he is also alleged of having been subjected to acts of torture.

495. On 3 July 2008, the First Branch of the Sanandaj Revolutionary Court convicted and sentenced Mr. Habibollah Latifi to the death penalty on the charge of *moharebeh* and on other security-related crimes in connection with his membership of and activities on behalf of the Kurdish Independent Life Party (PJAK). It is also reported that the trial was held behind closed doors and that neither the accused's lawyer nor his family were allowed to attend the trial. The Appeals Court in Sanandaj has subsequently confirmed this ruling but has allegedly upheld the death sentence on 18 February 2009.

496. On 16 January 2010, Mr. Habibollah Latifi was allegedly transferred to solitary confinement, prompting fears that the execution would be carried out.

497. It is now reported that the execution of Mr. Habibollah Latifi was scheduled on 26 December 2010, at Sanandaj Prison, Kordestan, in western Iran, and that it has been since then halted.

498. On 26 December 2010, it is further alleged that members of Mr. Latifi's family have been arrested, including his father, two sisters and his older brother, after their house was searched. It is reported that they have not been informed of the charge(s) on the basis of which they have been arrested. Concerns have been raised that their arrest may be linked with protests and calls to suspend the execution of Mr. Latifi.

#### **Communication received**

499. In a letter dated 15 February 2011, a response was received to the communication dated 30 December 2010. In connection with the conviction of Mr. Habibollah Latifi, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to existing information, Mr. Latifi has been charged with the following offences: (a) conspiring against national security by supporting the Pejak terror group and advancing its goals; (b) establishment of organizational relations and contacts with Pejak members and liaisons in the city of Sanandaj – Province of Kurdistan – and taking part in several acts of sabotage and terror, one of which resulted in the martyrdom (killing) of an Iranian police officer; (c) fabrication of handmade grenades, in collaboration with several Pejak members and supporters; (d) conspiracy to plant explosives in a cultural exhibition – the resulting fire led to the total destruction of the exhibition and injury to exhibition staff; (e) distribution of Pejak pamphlets, with the intent to foment public unrest in the city of Sanandaj.

500. Mr. Latifi's case was brought before Branch 1 of Sanandaj Court of Revolution. On the basis of Verse 33 of Holy Quran's *Maedah* chapter and issues 1, 3 and 5 of chapter 6, volume 4 of *Tahrir-ol-vasileh* (book of general Islamic rulings) – written by the late Imam Khomeini (P.B.U.H.) – and with consideration to the *Had* (punishment prescribed by Holy Quran for *Mohareb* or enemy of God) principle, the court – through verdict No. 8709978712100497 of 30 June 2008 – found the accused guilty of all charges and sentenced Mr. Latifi to death.

501. Following an appeal filed by Mr. Latifi and his defense lawyers – Mr. Saleh Nikbakht and Mr. Nemat Ahmadi – the verdict was reviewed by Branch 4 of Kurdistan Province Court of Appeal. However, on the basis of para. A of article 257 of the judicial procedure for Public and Revolutionary Courts – through verdict No. 8709978716601432 dated 29 January 2009 – the appeal court upheld the previous court's verdict.

#### **Comments and observations of the Special Rapporteur**

502. The Special Rapporteur thanks the Government for the response to the urgent appeal dated 30 December 2010. She takes note of the charges on the basis of which Mr. Latifi was convicted. Nevertheless, she regrets the absence of information on a number of issues. To date, the query to provide the definition of *moharebeh* under Iranian law has remained

without a reply. The Special Rapporteur would appreciate a response from the Government concerning the exact definition of *moharebeh* under Iranian law. Furthermore, no information was provided regarding any investigations carried out into the allegations of torture. In addition, the Special Rapporteur regrets the lack of information regarding the public nature of hearings and proceedings and whether Mr. Latifi have had access to a lawyer in the conduct of his trial. Finally, no information was provided on the legal basis for the arrest of Mr. Latifi's family members and on whether they have had access to legal counsel. The Special Rapporteur would appreciate receiving clarification on the outstanding issues.

#### **Communication sent**

503. On 31 December 2010, the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the detention, solitary confinement, systematic ill-treatment and the imminent execution of **Mr. Saeed Malekpour**.

504. It has been brought to the attention of the Special Rapporteurs that from the day of his arrest, Mr. Saeed Malekpour, a Canadian permanent resident and web programmer and developer, was reportedly placed into solitary confinement for more than one year and was subjected to severe acts of torture which have seriously impacted his physical and mental health. He has allegedly been sentenced to death on the charges of "agitation against the regime" and "insulting the sanctity of Islam" and is at imminent risk of execution.

505. According to the information received, in October 2008, Mr. Saeed Malekpour was allegedly arrested by Iranian plain-clothes forces, without an arrest warrant, on the charges of internet-related offences. It is alleged that he was taken to an undisclosed location referred to as the "technical office", that he was blindfolded and his head held down during the transport.

506. On the same night, he was reportedly transferred to Evin prison (Ward 2A, 2 Alef) and placed into solitary confinement in a cell measuring 2m x 1,7m where he remained from 4 October 2008 to 16 August 2009 (320 days). It is further reported that Mr. Malekpour was only allowed to leave the cell twice a day at specific times during which he was kept blindfolded. While detained in solitary confinement, Mr. Malekpour was reportedly not allowed to have contact with the outside world.

507. In the months following his arrest, Mr. Malekpour was allegedly interrogated day and night during long hours and was subjected to severe and harmful acts of torture. We have received information that he was interrogated and ill-treated in both, outside prison in the "technical office" as well as in the interrogation office of Ward 2A.

508. During the interrogation sessions, Mr. Malekpour has allegedly been severely beaten most of the time by a group, while blindfolded and handcuffed, including in the presence of the magistrate in charge of the case. In particular, we have received information on the following incidents:

509. In October 2008, it is alleged that the interrogators stripped Mr. Malekpour while blindfolded and that they threatened to rape him with a water bottle.

510. As a consequence of being severely beaten, lashed on his head and face with cables and administered a painful electric shock, his face was reportedly extremely swollen and Mr. Malekpour lost consciousness several times. That same night, after having been brought back to the cell, his ear was also bleeding. Mr. Malekpour banged on the door for help but no one came. The following day, as he allegedly could not move due to paralysis



of half of his body, he was brought to Evin Prison's clinic. Upon examination of Mr. Malekpour's injuries, the clinic's doctor strongly recommended that he be taken to the hospital. However, he was reportedly transferred back to his cell and left alone until 9 p.m.

511. Eventually he was transferred to Baghiatollah Hospital, where he was reportedly forced to use the alias of Mohammad Saeedi or suffer further threats of torture, if the orders were not complied with. Prior to the examination of Mr. Malekpour, one of the guards met with the doctor on duty in the emergency room. In his diagnosis, the doctor alleged that the condition of Mr. Malekpour was stress-related without undertaking any further medical examination. It is reported that Mr. Malekpour was returned to the detention centre and that the left side of his body has been paralysed for 20 days.

512. On 24 January 2009, after being kicked in the face by one of the interrogators, Mr. Malekpour reportedly had one of his teeth broken and his jaw displaced.

513. Furthermore, Mr. Malekpour was reportedly forced to confess charges he did not commit under pressure, psychological acts of torture, threats to himself and his family and promises of his immediate release or a more lenient sentence of two years imprisonment upon confession. The confessions were allegedly recorded and have been continuously broadcasted on television by state media channels, despite the promise that they would not be made public.

514. Mr. Malekpour was reportedly compelled to confess that he was purchasing software from the United Kingdom, which he posted on his website for sale. He was further allegedly forced to confess that each time someone visited his website, a software was installed onto the person's computer allowing control over the webcam, even when the computer was switched off. The interrogators have allegedly ignored Mr. Malekpour's explanation that this was impossible from a technological standpoint.

515. The aforementioned acts of torture have been reportedly described in a detailed letter written by Mr. Malekpour. He allegedly stated that they were aimed at having him confess the charges in a written document and in front of the camera. He has also stated that the physical beatings against him were nothing compared to the psychological torture endured during more than one year spent in solitary confinement. Subsequently, he has been allegedly additionally charged with "propagating against the regime" for writing this letter.

516. On 16 August 2009, Mr. Malekpour was reportedly transferred to the general ward 2A, but was denied visits from his family. From 21 December 2009 to 8 February 2010, he was placed again into solitary confinement with no contact with the outside world.

517. It is further reported that during the trial, Mr. Malekpour did not have regular access to legal representation. Nor was he provided with the technical tools or the intervention of IT technicians for his defence.

518. Between October 2008 and October 2010, sixteen complaints have allegedly been filed by Mr. Malekpour's wife, Ms. Fatemeh Eftekhari and his family which have not been addressed by the authorities, except from the Head of Teheran's Justice Department. In January 2009, the Head of the Justice Department reportedly sent his representatives to 2 Alef section of Evin prison. However, in the absence of an authorization, they were not granted access to Mr. Malekpour. In October 2010, the Head of Teheran's Justice Department allegedly sent an official letter to the judge in charge of the case. In this letter, he expressed the necessity to conduct investigation into Mr. Malekpour's case by court-trusted IT technicians and enjoined the judge not to issue a sentence during the investigation process.

519. On 4 December 2010, Mr. Saeed Malekpour was sentenced to death on the charges of "agitation against the regime" and "insulting the sanctity of Islam". According to the

presiding judge, the sentence was ordered by the Iranian Revolutionary Guard. On the same day, Mr. Malekpour was reportedly placed in solitary confinement for refusing to sign off his death sentence. According to the latest information received, Mr. Malekpour still remains in solitary confinement and no official document confirming the death sentence has been transmitted to his lawyer. In this regard, concerns have been raised as to the possibility for the lawyer to appeal against the sentence within the delay of twenty days imposed by law.

#### **Communication received**

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

#### **Communication sent**

521. On 11 January 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding **the pattern of executions, arrests and detentions carried out and which may be carried out**. This matter has been the subject of previous communications between the Government of the Islamic Republic of Iran and the mandates joining this appeal. Reports on recent executions prompt the Special Rapporteurs to again raise their concerns in this respect, which have not been alleviated by the replies received from the Government in response to previous communications.

522. The information received on particular cases of executions, arrests and detentions which have been brought to our attention is summarized in three parts: first, those relating to the persons' alleged membership of the People's Mojahedin Organization of Iran; second, those relating to the December 2009 Ashura protests; and third, further cases of executions, arrests and detentions which have been reported to us.

523. The Special Rapporteur have received information on the following cases concerning the persons' alleged membership of the People's Mojahedin Organization of Iran (PMOI):

524. On 28 December 2010, Mr. **Ali Saremi**, aged 63, was allegedly executed by hanging for enmity against God (*moharebeh*) and propagating against the regime in relation to his alleged membership of the PMOI. The trial reportedly took place in October 2008 before Branch 15 of the Revolutionary Court and was upheld by the Appeals Court. It is also reported that Mr. Saremi had not received confirmation of the death sentence by the authorities.

525. According to the information received, the execution has been carried out without the presence of Mr. Saremi's family or friends and the authorities had failed to inform his family of his execution. His body has reportedly been buried, over the weekend, at the Amir-Abad village in Boroujerd, nearly 400 km southwest of Tehran. It has been further alleged that Mr. Saremi's body had not been handed over to his family who has been threatened and prevented from holding memorial services in his honour.

526. Since 1982, Mr. Saremi had reportedly been arrested five times and had spent 23 years in detention. His latest arrest allegedly dates back to 2007 after visiting his son at Camp Ashraf, a refugee community in Iraq which is home to an estimated 3,500 exiled members of the PMOI. Mr. Saremi was arrested for his alleged presence at anti-revolutionary gatherings organized by PMOI and for sending information to this group.

527. It has been further reported that some members of Mr. Saremi's family were arrested by the authorities for protesting against his pending execution. On the day of the execution, Mr. Saremi's wife, Ms. **Mihan Saremi**, their daughter, **Pouya Saremi**, as well as family members of other detainees have allegedly been released following their arrest. According to the latest information received, Mr. Saremi's nephew, Mr. **Mohammad Ali Saremi**, and Mr. Saremi's brother, **Mohammad Reza Saremi**, are still being detained for having displayed a picture of Mr. Ali Saremi as a sign of mourning.

528. Concern was also raised on reported arrests and threats against Camp Ashraf residents' family members. We have been informed that Mr. **Jaafar Kazemi**, Mr. **Javad Lari** and Mr. **Mohammad Ali Haj-Aghaei** have allegedly been arrested, sentenced to death after they were all found guilty of enmity against God in relation to their alleged membership of PMOI, and that they are at imminent risk of execution. On 15 May 2010, Tehran's prosecutor has reportedly announced that the death sentences of Mr. Jaafar Kazemi, Mr. Mohammad Ali Haj-Aghaei and that of Mr. Mohammad Ali Saremi were upheld by the Appeals Court.

529. On 18 September 2009, Mr. **Jaafar Kazemi**, aged 47, has reportedly been arrested for his alleged membership of PMOI in the 1980s and 1990s, and for his participation in protests which followed the June 2009 presidential election. Concern was expressed that he may have been subjected to torture during his interrogation and detention in Evin prison of Tehran in order to have him confess the charges on camera. He was sentenced to death for *moharebeh* and propagating against the regime. On 26 April 2010, he was allegedly informed that his death sentence had been confirmed by an appeals court. A further appeal has reportedly been rejected in July 2010.

530. Mr. **Mohammad Ali-Haj-Aghaei**, aged 62, was reportedly arrested and tried alongside Mr. Kazemi. It is alleged that he had also visited relatives in Camp Ashraf. In April 2010, he was allegedly sentenced to death. This sentence has been upheld by the Supreme Court in September 2010.

531. In August 2010, Mr. **Javad Lari**, a Tehran bazaar merchant aged 55, has been sentenced to "death without pardon" for enmity against God and corruption. According to the information received, he is detained at Evin Prison where he has allegedly been subjected to torture and forced confession.

532. In December 2009, a series of protests, commonly referred to as the Ashura protests, were held in order to commemorate the deaths which allegedly occurred following the outcome of the June 2009 presidential election. In this context, we have received information on the following cases:

533. Two days following the Ashura protests, Ms. **Farah (also known as Elmira) Vazehan**, aged 48, was reportedly arrested and sentenced to death for enmity against God. In August 2010, she had allegedly been convicted for her participation in the protests – including for taking photographs and sending them abroad and for supporting the PMOI – and has been sentenced to death.

534. Mr. **Abdolreza Ghanbari**, a teacher aged 42, and father and son Mr. **Ahmad Daneshpour Moqhaddam** and **Mohsen Daneshpour Moqhaddam**, have allegedly also been arrested following the December 2009 protests and sentenced to death in January and February 2010, respectively. Due process concerns were raised with regard to the conduct of the trials.

535. On 15 May 2010, Tehran's prosecutor has reportedly announced that the death sentences of these three aforementioned persons were upheld by the Appeal Court after they were all found guilty of enmity against God in relation to participation in the Arusha protests and in relation to their alleged membership of PMOI.

536. On 27 December 2009, Ms. **Zahra Bahrami**, an Iranian-Dutch citizen, had also been arrested in the context of the aforementioned events. According to her lawyer, her case was investigated on the basis of two types of charges: first, on the charges of *moharebeh*, propaganda against the regime and membership in a proscribed organization; and second, on the charge of drug possession. She has been sentenced to death on the latter charge. It has been further alleged that the Dutch authorities have been informed of her arrest, only six months thereafter.

537. On 17 December 2010, it is reported that Ms. **Hakimeh Shokri**, Ms. **Neda Mostaghimi** and Mr. **Mehdi Ramezani** have been arrested and detained for having gathered to commemorate the killing of Mr. Amir Arshad Tajmir. Mr. Tajmir was allegedly run over by a security forces vehicle on 29 December 2009 during the Ashura commemorative event.

538. On 29 December 2010, the authorities prevented assemblies marking the deaths that occurred a year earlier, in 2009. In this context, it is alleged that family members of detainees have been held in detention. Among these persons are Mr. **Mohammad Nourizad**, a journalist and filmmaker, now on hunger strike, Ms. **Fakhrosadat Mohtashamipour**, the wife of another detainee, and Mr. **Mostafa Tajzadeh**, whose case was previously addressed in a communication dated 10 July 2009.

539. Furthermore, we have received information on the following cases of arrests, detentions and executions:

540. On 28 December 2010, Mr. **Ali Akbar Siadat** was reportedly executed by hanging on the charges of undertaking espionage for Israel and corruption in Tehran's Evin Prison. He was allegedly sentenced to death by the 10th branch of the Revolutionary Court. His death sentence was upheld by the Supreme Court following a trial during which he reportedly did not have access to legal representation.

541. He was allegedly arrested in 2008, when attempting to leave the country with his wife. In the first months following his arrest, he reportedly was unaware of his place of detention and did not have contact with his family. He was also allegedly forced to accept the charges against him and confess them on camera under physical and mental pressure.

542. On 31 July 2008, Mr. **Hossein Khezri**, aged 28, was reportedly arrested in Kermanshah. On 11 July 2009, he was allegedly convicted for *moharebeh* and endangering state security, and sentenced to death.

543. His death sentence was reportedly upheld by the 10th branch of the Court of Appeals on 8 August 2009 and confirmed by the 31st branch of the Supreme Court following a trial during which he was not given adequate time to prepare his defence. According to the latest information received, he faces imminent risk of execution.

544. This case was addressed in two previous communications dated 25 November 2010 and 23 April 2010. Mr. Khezri was allegedly arrested by the Nabi Akram Sepah branch on 31 July 2008. During his detention, Mr. Khezri was reportedly subjected to torture, leading to the partial loss of his eyesight. It is further reported that he had been beaten several hours a day under psychological pressure and intimidation in Kermanshah detention center. The beatings have reportedly lead to severe bleeding and swelling of his genitalia for 14 days, to an 8 cm open wound to his right leg as well as to bruises and inflammation of several parts of his body due to 49 days of beating with night sticks. His request for an investigation of the allegations of torture was denied in March 2010.

545. Since then, he has reportedly been transferred several times to other detention facilities, where he was allegedly subjected to further acts of torture. Since the 18 September 2008, Mr. Khezri has been transferred to Sepah Al Mehdi prison in Orumiyeh, to the Western Azerbaijan's Information Ministry headquarter on 15 February

2009, to Qazvin prison, 200 miles from Orumiyeh, and back to Orumiyeh prison on 11 May 2009.

546. In total, Mr. Khezri has allegedly spent 8 months in solitary confinement. It is further reported that Mr. Khezri has filed a complaint against his ill-treatment and was subsequently threatened for having submitted it. Concerns have also been raised as to the impact of his treatment and detention on his mental health. It is alleged that he has tried on two occasions to kill himself.

547. c) On 27 December 2010, Mr. **Reza Sharifi Bukani** was allegedly transferred from Cellblock 4 at Rajayi Shahr (Gohardasht) Prison in Karaj to an undisclosed location at around 10:00 h. Since then, there is no news on his condition and whereabouts. He has reportedly been sentenced to death for endangering state security and for his alleged cooperation with Kurd political parties. In addition, he was charged on 26 December 2010, for the bombing of the Amir Mosque before the Shahriar Revolutionary Court without the presence of his lawyer.

### Communication received

548. A response to the communication dated 11 January 2011 was received on 4 February 2011. In connection with the conviction of Ms. Zahra Bahrami, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to reports, Ms. Bahrami was charged with membership in the illegal “Monarchical Society”, participation in last year’s riots and incidents which followed Iran’s presidential elections, possession of 450 grams of cocaine, 420 grams of opium and the selling of 155 grams of cocaine. Ms. Bahrami was arrested on a temporary warrant and sent to prison on 31 December 2009. Considering the many charges laid against Ms. Bahrami, by Branches 15 and 26 of Tehran Court of Revolution, her dossier was thoroughly investigated. On charges of possession and selling of drugs and the charge of *Moharebeh* (enmity with God); Branch 15 of the Islamic Court of Revolution, on the basis of para. 6 of article 8 and para. 2 of article 5 of the law on illicit drugs and the explicit confessions of the accused – defense was provided by her lawyer, Ms. Zhinous Sharif Razi – sentenced Ms. Bahrami to be executed, her property to be confiscated and the payment of 14 million Rials in fines.

549. In connection with the conviction of Mr. Hussein Khezri Khanik, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to information received from the Justice Department of Western Azerbaijan Province, Mr. Hussein Khezri Khanik, son of Ali, born in 1982 was arrested on charges of membership in the military wing of Pejaj, a terror group, and involvement in the slaying of two police officers and the injury of an additional four officers. After the completion of the trial and the relevant legal procedures and presentations of his defense lawyers – Mr. Ehsan Mottavi – the accused was found guilty by Branch 1 of Uromieh Court of Islamic Revolution through verdict No. 167 dated 21 June 2003 on the basis of articles 186, 189 and 190 of the Islamic Code and was sentenced to death for membership in Pejaj terror group and *Moharebe* (enmity with God).

550. The sentence was contested and appealed by Mr. Khezri’s attorney. Subsequently Western Azerbaijan Appellate Court reconsidered the case, however, on the basis of para. A of article 257 of the Penal Code, the court upheld the previous court’s decision (verdict No. 8809974414400839 dated 8 August 2009). Additionally, the case as brought before Western Azerbaijan’s Amnesty Commission as well as referral to the judiciary’s Central Amnesty Commission.

551. The verdict was carried out on 15 January 2011. All allegations otherwise including lack of access to legal counsel or the maltreatment of the convict are false and baseless.

### Comments and observations of the Special Rapporteur

552. The Special Rapporteur thanks the Government of the Islamic Republic of Iran of the response to the communication which provides information on the individual cases of Ms. Zahra Bahraimi and Mr. Hussein Khezri. However, the Special Rapporteur deplores the information indicating that the death sentence of Mr. Khezri has been carried out despite several Special Rapporteurs, including the Special Rapporteur on the independence of judges and lawyers had urged the Government to suspend the death sentence of the persons mentioned in the urgent appeal above, until the question whether the acts they have been found guilty of satisfy international criteria for what constitutes the “most serious crimes” has been clarified and that the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled.

553. Concerning the information provided on the case of Ms. Zahra Bahraimi, the Special Rapporteur believes that carrying out the death sentence on the basis of charges which do not constitute “most serious crimes” according to international law would be unlawful and therefore calls for a commutation of the sentence.

554. In addition, the Special Rapporteur regrets that no information was provided on the cases of Mr. Ali Saremi, his wife Ms. Mihaan Saremi, and their daughter, Pouya Saremi, Mr. Mohammad Ali Saremi, Mohammad Reza Saremi, Mr. Javad Lari, Mr. Mohammad Ali Haj-Aghaei, Mr. Jaafar Kazemi, Mr. Mohammad Ali-Haj-Aghaei, Mr. Javad Lari, Ms. Farah (also known as Elmira) Vazehan, Mr. Abdolreza Ghanbari, father and son Mr. Ahmad Daneshpour Moqhaddam and Mohsen Daneshpour Moqhaddam, Ms. Hakimeh Shokri, Ms. Neda Mostaghimi, Mr. Mehdi Ramezani, Mr. Mohammad Nourizad, Ms. Fakhrosadat Mohtashamipour, Mr. Mostafa Tajzadeh, Mr. Ali Akbar Siadat, and Mr. Reza Sharifi Bukani, as requested in the communication. Given the seriousness of their situation, she urges the Government to provide information in relation to these cases at the earliest possible date.

### Communication sent

555. On 11 February 2011, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the imposition of the death penalty upon **Ms. Fatemeh Salbehi** and **Mr. Ehsan Rangraz Tabaatabaa’ie**, who were reportedly both juveniles at the time the alleged criminal offences were committed.

556. According to the information received, Ms. Fatemeh Salbehi, currently aged 19, is at imminent risk of execution for having allegedly murdered her husband three years ago, when she was 16 years old. In May 2008, her husband, Mr. Hamed Sadeghi, an employee of the Public Relations Office at the local judiciary, was reportedly found dead in their home in Shiraz when she was at school.

557. Fatemeh Salbehi was allegedly arrested and interrogated without the presence of a lawyer. It is further alleged that she first confessed to the murder, but then stated that two persons broke into her home and killed her husband. Fatemeh Salbehi was allegedly convicted of murder by Branch Five of the Fars Criminal Court and sentenced to death. This sentence has reportedly been upheld by the Supreme Court.

558. In 2007, Mr. Rangraz Tabaatabaa’ie, now aged 19, and two other men were arrested on suspicion of having committed sodomy rape when Mr. Rangraz Tabaatabaa’ie was 17 years old. After interrogation the two other accused persons denied the accusations and were subsequently released. However, it is alleged that Mr. Rangraz Tabaatabaa’ie was beaten, blackmailed and forced to confess. He was later charged with the offence of “*lavat be onf*”, *i.e.* consummated sexual activity between males, whether penetrative or non-

penetrative, under article 108 of the Iranian penal code. We are informed that under Iranian law *lavat* includes both consensual and forcible sodomy between men.

559. Prior to the trial, the complainant allegedly withdrew his allegation of rape. Nonetheless, officials decided to proceed with the trial on the basis of “*hudud*” *i.e.* public nature of the crime.

560. The Special Rapporteurs are informed that during the trial, Mr. Rangraz Tabaatabaa’ie pleaded not guilty, did not have access to a lawyer and informed the court that his confession had been obtained under torture. However, the court proceeded to use his confession as a basis for the ruling. We are informed that this is contrary to article 38 of the constitution of Islamic Republic of Iran, which stipulates that “All forms of torture for the purpose of extracting confession or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence.” Additionally, article 116 of the Islamic Penal Code states that “The confession of [sodomy] is only admissible if the person who confesses is ... under no pressure, and is willing to testify.”

561. Furthermore, according to articles 114 and 115 of the Islamic Penal Code, in order to prove the act of *lavat* based on the confession, “the confession should be made four times in front of the judge” If the confession is made less than four times, the confession is not admissible. In the case of Mr. Rangraz Tabaatabaa’ie, this was allegedly not complied with and there was no evidence offered to substantiate the allegation.

562. Following the trial, Mr. Rangraz Tabaatabaa’ie was convicted of sodomy rape and sentenced to death by a five-member panel of judges at the Fourth Branch of the Criminal Court in Fars Province, Shiraz. On appeal, the case was heard by the Thirteenth Branch of the Iranian Supreme Court in Tehran, which upheld the decision of the lower court. Currently, Mr. Rangraz Tabaatabaa’ie is reportedly being held at the Adel Abaad Prison in Shiraz while awaiting execution. The source has also indicated that it is not clear whether the Head of the Judiciary has approved the execution.

#### **Communication received**

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

**Responses to communications sent earlier** (for ease of reference a summary of the communications sent earlier is also reproduced below)

#### **Communications sent**

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

565. According to the information received, on 16 June 2009, a group of plainclothes agents reportedly arrested Mr. Soltani in front of his home, and took him to an undisclosed location. The whereabouts of Mr Soltani are currently unknown.

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

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

568. Following our joint urgent appeal of 18 June 2009, we have now received new information concerning the detention of Mr. Abdolfattah Soltani. Mr. Soltani was reportedly arrested on 16 June 2009 in front of his home in Tehran by four security service agents in plainclothes, who handcuffed him and brought him with them. His whereabouts were not communicated to his relatives until 9 July 2009, when they were informed that Mr. Soltani was being held in Section 209 of Evin prison in Tehran. Section 209 is reportedly a part of the prison run by the Ministry of Intelligence, where political prisoners are detained.

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

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

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

#### **Communications received**

572. In a letter dated 6 May 2010, the Government responded to the communication dated 18 June 2009 as follows. Mr. Abdolfatah Soltani has had several police/court records with respect to arrestable offences including acting against the national security, revealing of classified information relating to his clients to foreign elements and propaganda against the Islamic Republic. He has been tried in the court under some of those charges. He was found guilty on a number of charges and was exonerated on some. He was arrested again on 16 June 2009 after the unrest following the presidential election on the basis of corroborative evidence. He served his sentence similar to other prisoners, benefiting from health services and he was able to contact his relatives and defense attorney. His case was tried in the court on the aforementioned charges. He was released on 26 August 2009 on bail. His case is no the court docket for trial. The allegations in the letter of the Special Rapporteurs are incorrect and baseless.

573. By letter dated 7 October 2010, the Government provided the following information in relation to the same case in response to both communications sent respectively on 18 June and 16 July 2009. Mr. Abdolfatah Soltani has numerous criminal records for offences such as acting against national security, disclosing classified information of his clients to foreign elements, waging propaganda against the Islamic Republic of Iran. He was convicted to prison sentence on some charges and acquitted on others. He was arrested on 26/3/1388 again after the unrest following the election. There was corroborative evidence



proving his involvement in provoking unrest and sabotage. During his incarceration, he enjoyed proper health care like other prisoners, and was able to contact his lawyer and members of his family. His case was tried by court and he was freed on bail on 4/6/1388. His case is pending for trial and the claims stated in the letter of the rapporteurs are untrue and hereby rejected.

#### **Comments and observations of the Special Rapporteur**

574. The Special Rapporteur thanks the Government for the responses provided to the urgent appeals dated 18 June and 16 July 2009. While bearing in mind that Mr. Soltani has been in total the subject of nine communications by special procedures, she notes that the allegations have been denied by the Government. Nonetheless, she welcomes the information indicating that he was able to contact his lawyers and members of his family and most importantly, that she was freed on bail on 4 June 2009 (1388).

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

#### **Communication sent**

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

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

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

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

### **Communication received**

580. In a letter dated 7 October 2010, the Government responded to the urgent appeal sent on 16 July 2009 as follows. Mr. Mohammad Ali Dadkhah was arrested on the charges of possession of a quantity of narcotics and one unauthorized gun at his law office. He was freed later on bail and his case is currently being reviewed by the court. Moreover, Ms Sara Sabaghian and Ms Bahareh Davaloo were taken to the nearest police station because of their presence in his office and were freed after a few hours. The claim concerning the arrest of Malileh Dadkhah and Mr. Reesain [Raisian] is not true. They were never arrested.

### **Comments and observations of the Special Rapporteur**

581. The Special Rapporteur thanks the Government for providing information on the fate and whereabouts of the five persons subjects of the urgent appeal dated 16 July 2009. She welcomes the information stating that the above mentioned persons have been released from custody or have not been arrested, noting that the allegations that Ms. Dadkhah and Mr. Raisian were arrested have been denied. Nevertheless, she regrets the lack of substantive information on the accuracy of the allegations and concerns raised in the communication, on any complaints they may have lodged and the way they have been addressed; and on any investigations or inquiries carried out in relation to these cases.

### **Communication sent**

582. On 29 October 2009, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the reportedly imminent execution of seven men belonging to the Ahwazi Arab community in Iran. Their names are Messrs. Ali Saedi, aged 25, Walid Naisi, aged 23, Majid Fardipour (name in Arabic: Majid Mahawi), aged 26, Doayr Mahawi, aged 50, Maher Mahawi, aged 21, Ahmad Saedi, aged 28, and Yousuf Leftehpour, aged 25.

583. According to information received, the seven men were arrested on or around 12 August 2007. They were held in incommunicado detention at an unknown location by intelligence services between three to fifteen months. It is feared that during this period they may have been tortured in order to extract confessions from them. The accused were later transferred to Karoun Prison in Ahvaz city, where it is reported they are currently being held.

584. On or around 30 September 2009, they were tried, convicted and sentenced to death by a branch of the Revolutionary Court in Ahvaz for the offences of “acting against national security” and the killing of a Shi’a cleric, Sheikh Hesam al-Sameyri in June 2007. The seven men did not have access to counsel either before or during the trial.

### **Communication received**

585. By letter dated 7 October 2010, the Government provided the following information.

586. Ali Savaed (son of Ghasem): He was arrested on the charges of *moharebeh* (waging war against god), corrupting the Earth by assassinating Mr. Sheikh Hesahm Siomari with the intention to act against the security of the state, purchasing and keeping weapons and war ammunitions and membership in the terrorist group, Harekat al Sunni al-Tahrir al-Ahvaz. His lawyer is Saeed Nisi. His case was tried in the court and he was sentenced to death. His defense attorney appealed against the sentence, but the sentence was upheld by the appellate court.

587. Yousef Laftehpour (son of Majid): He was arrested on the charges of *moharebeh* (waging war against god), corrupting the Earth by assassinating Mr. Sheikh Hesahm

Siomari with the intention to act against the security of the state, purchasing and keeping weapons and war ammunitions and membership in the terrorist group, Harekat al Sunni al-Tahrir al-Ahvaz. His lawyer is Mansour Atta Shaneh. His case was tried in the court and he was sentenced to five years in prison.

588. Damir Mahavi (son of Karim): He was arrested on the charges of *moharebeh* (waging war against god), corrupting the Earth by assassinating Mr. Sheikh Hesahm Siomari with the intention to act against the security of the state, purchasing and keeping weapons and war ammunitions and membership in the terrorist group, Harekat al Sunni al-Tahrir al-Ahvaz. His lawyer is Javad Tariri. His case was tried in the court and he was sentenced to five years in prison.

589. Ahmad Savaedi (son of Damir): He was arrested on the charges of *moharebeh* (waging war against god), corrupting the Earth by assassinating Mr. Sheikh Hesahm Siomari with the intention to act against the security of the state, purchasing and keeping weapons and war ammunitions and membership in the terrorist group, Harekat al Sunni al-Tahrir al-Ahvaz. His lawyer is Mansour Atta Shaneh. His case was tried in the court and he was sentenced to five years in prison.

590. Maher Mahavi (son of Damir): He was arrested on the charges of *moharebeh* (waging war against god), corrupting the Earth by assassinating Mr. Sheikh Hesahm Siomari with the intention to act against the security of the state, purchasing and keeping weapons and war ammunitions and membership in the terrorist group, Harekat al Sunni al-Tahrir al-Ahvaz. His lawyer is Javad Tariri. His case was tried in the court and he was sentenced to five years in prison.

591. Valid Nisi (son of [unable to read]): He was arrested on the charge of acting against the security of the state by way of membership in the terrorist group Harekat al Sunni al-Tahrir al-Ahvaz, waging propaganda against Islamic Republic of Iran and in the interest of groups and organizations opposing the Islamic Republic and purchasing and keeping weapons and war ammunitions. His lawyer is Abdol Ali Mehrkhah. His case was tried in the court and he was sentenced to five years in prison.

592. Majed Fowadi (son of Hamid): He was arrested on the charge of acting against the security of the state by way of membership in membership in the terrorist group, Harekat al Sunni al-Tahrir al-Ahvaz, waging propaganda against the Islamic Republic of Iran and in the interest of groups and organizations opposing the Islamic Republic and purchasing and keeping weapons and war ammunitions. His lawyer is Javad Tariri. His case was tried in the court and he was sentenced to five years in prison.

#### **Comments and observations of the Special Rapporteur**

593. The Special Rapporteur thanks the Government for its replies to the urgent appeal dated 29 October 2009. The Special Rapporteur notes that Messrs. Yousef Laftehpour, Damir Mahavi, Ahmad Savaedi, Maher Mahavi, Valid Nisi, Majed Fowadi were sentenced to five years' imprisonment, and not to death, while Mr. Ali Savaed was sentenced to death, as stated in the communication and had his sentence upheld by the appellate court [the spelling of the names as contained in the response differs from the one provided by the source]. In this respect, the Special Rapporteur would appreciate receiving updated information on any appeal trials or trials before the Supreme court.

594. She regrets, however, the absence of detailed information on a number of issues raised in the urgent appeal, notably on any investigations carried out in relation to the allegation according to which the persons named above were subjected to torture while in incommunicado detention.

595. While she notes that all the defendants had a lawyer to represent them, she regrets that no details were provided on the question of whether and at what stage of the proceedings, the defendants had access to counsel and whether they were given the option of choosing their own counsel. She calls on the State to provide a response to the outstanding issues. In this regard, she wishes to stress the importance of allowing all defendants to have access to legal representation as stated in the article 14(3)(d) of the International Covenant in Civil and Political Rights and at all stages of judicial proceedings in accordance with para. 1 of the Basic Principles on the Role of Lawyers, adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990.

#### **Communication sent**

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

597. According to the information received, a criminal court in Oroomiyeh, West Azerbaijan Province, sentenced Sareimeh Ebadi and Bu-Ali Janfeshani to death on charges of adultery. The death sentence followed a trial in which they were allegedly denied the right to select their own defense attorneys.

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

#### **Communication received**

599. By letter dated 7 October 2010, the Government responded to the aforementioned urgent appeal as follows. Islamic law aims to ensure the stability of society from its very base – the family – which is the ‘nucleus’ of society that breeds society’s values and holds together the various institutions in the society. The heavy penalty of stoning is stipulated in Islam in order to serve as a strong deterrent and is used to achieve this noble goal. However, Islam has set very difficult conditions in proving these types of serious offenses. The purpose behind the difficulty in proving the guilt in such offenses is to reduce to minimum the probability of error in judgements. The penalty is applied only after it is proved that the public conscience has been harmed and upon the testimony of many witnesses. Therefore, although the punishment is very harsh and severe, the evidence required to prove is also extremely complicated. The purpose of Islam for such harsh rules is to have a mechanism for deterrence and to prevent the recurrence of such crimes in the society. There are practically a lot less family betrayals in Islamic societies than in secular Western societies.

600. Islamic religious scholars believe that the punishment of stoning is totally different from execution and the two are not comparable. However, with respect to the accusation of adultery against Ms. Sarimeh Ebadi, she was tried in a court in the city of Orumieh, but because of the importance of the case, it should be heard by a provincial court in accordance with article 4 of the law relating to the reform of general courts adopted in 2002. The case is presently under review by the provincial criminal court of West Azerbaijan in Branch 5. No ruling has yet been issued on this case.

**Comments and observations of the Special Rapporteur:**

601. The Special Rapporteur thanks the Government for the response to the urgent appeal dated 27 January 2010. However, she remains deeply concerned about the harsh sentence imposed upon Ms. Sareimeh Ebadi and Mr. Bu-Ali Janfeshani. In countries which have not abolished the death penalty, such sentence may only be imposed for the most serious crimes according to article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party. Already in 1993, the Human Rights Committee noted in its concluding observations on the period report submitted by the Islamic Republic of Iran that the imposition of the death penalty for adultery is incompatible with the Covenant and thus with Iran's obligations under international human rights law. This has also been acknowledged in the General Assembly resolution 65/226 adopted on 21 December 2010, which calls upon the State to abolish the use of stoning (para. 4(d)).

602. In respect of the questions raised in the communication, the Special Rapporteur further regrets the lack of information provided on disaggregated statistics concerning the number of persons, men and women, sentenced to death in the past three years for the offence of adultery, as she remains concerned at the reported imbalance between the number of women and men sentenced to death on charges of adultery (*c.f.* previous communication sent on 30 July 2008). To address such discrimination in the administration of justice, the Special Rapporteur wishes to refer to the recommendations formulated in the Annual Report to the Human Rights Committee, in particular to those relating to the development of a gender-sensitive judiciary (A/HRC/17/30, paras. 91-93).

603. She finally urges the Government to provide updated information on the trials and sentencing of Ms. Sareimeh Ebadi and Mr. Bu-Ali Janfeshani. In the event they have been sentenced to the death penalty, she calls upon the Government to commute their sentence.

**Concluding comments and observations of the Special Rapporteur:**

604. The Special Rapporteur welcomes the responses of the Government to four communications sent during the reporting period and encourages the Government to provide information on the outstanding issues raised in these communications as mentioned in the comments above. However, she regrets that ten of the fifteen communications remained unanswered at the time the present report was finalized. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and calls upon the Government of the Islamic Republic of Iran to transmit responses to the outstanding communications at the earliest possible date. Considering the irreversible nature of the death penalty, she urges the Government to provide updated information on the situation of those sentenced to death as requested in the communications summarized above.

605. While she welcomes the responses provided by the Government to five communications (out of the ten unanswered communications) sent during the reporting period covered in last year's report by letter dated 7 October 2010, she regrets the absence of substantive information in relation to these cases. She calls on the Government to address the outstanding concerns raised therein and wishes to underline the importance of replying within a reasonable deadline, in particular when the communications concerns time sensitive cases which may have irreversible consequences for the persons subjects of the appeals.

606. She remains extremely concerned at the high number of alleged human rights violations, many of which fall within the scope of her mandate. This has for instance been recently noted in the resolution of the General Assembly 65/226, adopted on 21 December 2010.

607. The Special Rapporteur is in particular concerned at the number of executions allegedly carried out and the high number of people sentenced to death following trials which often fall short of fair trial guarantees and due process of law. In addition, according to numerous reports, a large number of people seem to be sentenced to death on charges which do not qualify as “most serious crimes” under international human rights law. These worrying issues prompted the Special Rapporteur jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, to issue a press release on 2 February 2011, in which the two experts called for a moratorium on the death penalty. The press release is summarized under section IV. The Special Rapporteur would like to reiterate that in all cases, and notably in capital punishment cases, there is an obligation to provide criminal defendants with “a fair and public hearing before an independent and impartial tribunal” according to article 14(1) of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a State party. In this regard, the aforementioned General Assembly resolution 65/226, which enjoys the support of the Special Rapporteur, calls upon the Government to abolish, in law and practice, public executions and other executions carried out in the absence of respect for internationally recognized safeguards (para. 4(b)).

608. Furthermore, the Special Rapporteur notes a number of consistent allegations which indicate a pattern of acts of threats to lawyers, intimidation, interference in the discharge of their professional duties and lawsuits against lawyers. In this regard, she wishes to reiterate the importance to guarantee the right of lawyers to freely represent their clients and perform their professional activity without fear, intimidation and interference. In this respect, the Special Rapporteur would like to stress once again the importance for Governments to respect and take into account the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, aimed at assisting Member States to protect and ensure the proper role of lawyers.

609. In view of the number of allegations of torture and ill-treatment, and despite the Islamic Republic of Iran has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur wishes to refer to Human Rights Council resolution 8/8, adopted in June 2008, which urges States “to take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold persons who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished” (para. 6(b)) and also para. 2 of General Comment No. 20 of the Human Rights Committee, which provides that complaints must be investigated promptly and impartially by competent authorities.

610. The Special Rapporteur wishes to stress that human rights violations should not remain unpunished. In a report to the General Assembly dated 10 August 2010, she has formulated a number of recommendations to address impunity and wishes to refer to these (A/65/274, paras. 80-95) as well as to the Updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1). According to the Human Rights Committee, failure by a State party to investigate allegations of human rights violations or to bring the perpetrators to justice could in and of itself give rise to a separate breach of the International Covenant on Civil and Political Rights (CCPR/C/21/Rev.1/Add.13, paras. 15 and 18).

611. In this context, she welcomes the adoption of Human Rights Council resolution 16/9 in which it decided to appoint a Special Rapporteur on the situation of human rights in the Islamic Republic of Iran. Nevertheless, she also wishes to remind the Government of her

request to visit the country. She hopes that the Government will consider this request favourably in the near future.

## Israel

### Communication sent

612. On 26 March 2010, the Special Rapporteur, together with Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the detention and interrogation of 13 Palestinian minors at Al Jalame Interrogation and Detention Centre, notably A.S., male, 16 years old, from a village near Qalqiliya, West Bank; M.A., male, 16 years old, from Bethlehem, West Bank; S.K., male, 16 years old, from a village near Tulkarm, West Bank; A.A, male, 16 years old, from Nablus, West Bank; A. 'A, male, 16 years old, from Nablus, West Bank; M.S., male, 17 years old, from Nablus, West Bank; A.S., male, 17 years old, from a village near Qalqiliya, West Bank; M.Z., male, 17 years old, from a village near Qalqiliya, West Bank; M.S, male, 16 years old, from a village near Salfit, West Bank; T.K, male, 17 years old, from Nablus, West Bank; M.R', male, 17 years old, from Hajja village, near Qalqiliya, West Bank; U.M., male, 17 years old, from a village near Qalqiliya, West Bank and M. A, male, 16 years old, from Tulkarm Refugee Camp, West Bank.

613. The above-mentioned 13 individuals were removed from their homes in the occupied Palestinian territory and taken to Al Jalame, which is an interrogation and detention centre located in northern Israel, near the city of Haifa. Reports indicate that cell no. 36 of Al Jalame is used to hold minors in solitary confinement in order to extract confessions. Minors held at Al Jalame for interrogation are denied access to a lawyer and do not receive family visits.

614. On 10 February 2008, A.S. was arrested by Israeli soldiers from his family home around 7:00 a.m. He was blindfolded and his hands were tied behind his back with plastic ties. A.S. was transferred to an Israeli military base at Soufin, near Qalqiliya where he was examined by a doctor. Reports indicate that A.S. was beaten by soldiers at the military base. Later on the same day, A.S was transferred to Huwwara Interrogation and Detention Centre and then to Al Jalame Interrogation and Detention Centre. There, he was allegedly put in a very small cell for the following 15 days. Information received suggests that A.S. had been interrogated for three days. For an entire day, his hands and feet were tied to the wall in the shape of a cross which caused severe pain and the swelling of his hands. He had to urinate in the cell. Subsequently, A.S. was transferred to Damoun prison. Abed Saleem was released from detention on 10 December 2009.

615. On 25 February 2008, M.A. was arrested by Israeli soldiers from his family home around 2:00 a.m. He was blindfolded and his hands were tied behind his back with plastic ties before he was placed on the floor of a jeep for transfer. M.A. was first taken to a military checkpoint at Etzion Junction, in the West Bank. M.A. was reportedly slapped and kicked by a soldier for around five minutes at the checkpoint. M.A. was later transferred to Etzion Interrogation and Detention Centre and Ofer prison, in the West Bank, where he had been interrogated for eight days. Subsequently, he was transferred to Al Jalame Interrogation and Detention Centre, where he was detained for 25 days in total. During the first five days, he was put in a cell by himself. Afterwards, he was interrogated and was made to sit on a metal chair which was tied to the floor and his hands were tied behind his back. The interrogator, who introduced himself as "Chris", told him that there were people who had confessed against him. During the interrogation, which lasted about one hour, the interrogator was shouting in M.A.'s face to make him confess, but he refused to. On the 18th day of his detention, he was again interrogated. After the interrogator threatened M.A.

that his mother and siblings would be arrested, he confessed of throwing stones and Molotov cocktails. After he had confessed, they took him out of the cell and put him in a normal cell. After his confession, M.A. was transferred to Telmond Prison, near Tel Aviv. M.A. was accused of being a member of a banned organisation. His current situation and condition are unknown.

616. On 10 March 2008, S. K. was arrested by Israeli soldiers from his family home around 3:00 a.m. He was blindfolded and his hands were tied behind his back with plastic ties. He was then placed in a jeep for transfer to Salem Interrogation and Detention Centre and subsequently to Al Jalame Interrogation and Detention Centre. S. K was put in a cell with another child, in which he stayed for 14 days. The cell was very small for two persons and had dim yellow lights and two holes in the ceiling for ventilation. The walls were grey and rough so that one could not lean back against them. It was very hot inside the cell. The food, which was insufficient for two persons, was slipped through a small hole in the door. After two weeks, two additional persons were brought into the cell, which enhanced the overcrowding in the cell. The inmates only left the cell for interrogation or proceedings to extend the periods of imprisonment. On 13 March 2008, S.K. was taken out of the cell for interrogation. S.K. was made to sit on a very small chair from midday to 6 p.m. His hands were tied behind his back which caused pain. He was allowed to go to the bathroom once. The interrogation was conducted by an interrogator whose name was reportedly Ran. He was then taken back to the cell and not being interrogated for another week. After that period, he was again brought for interrogation where he was confronted with a confession of one of his friends against him. Then, the interrogator wrote S.K.'s statement in Hebrew and asked him to sign it but he refused. Instead, S.K. asked to write his own statement in Arabic. This interrogation lasted for one and a half hours. After the interrogation, S.K. was transferred to Telmond Prison, near Tel Aviv. S.K. was accused of firing at soldiers and was sentenced by a military court to 30 months imprisonment. He is currently being detained and is scheduled to be released on 10 September 2010.

617. On 23 April 2008, A.A.was arrested by Israeli soldiers from his family home at 2:00 a.m. Abed Akrou't's hands and legs were tied. A soldier grabbed A.A.by the hair and pushed him towards a jeep, banging his head against the bonnet, before putting him inside on the floor of the vehicle. A.A.was first taken to Huwwara Interrogation and Detention Centre and then Al Jalame Interrogation and Detention Centre. Upon arrival, he was taken to a room where his hands were tied from the back to a small chair, which was fixed to the floor. The interrogator, who introduced himself as "Franco", spoke Arabic and stated that he ordered Abed Akrou't's arrest. A.A.was then put in solitary confinement and when he was interrogated again, he was once slapped hard in the face. Consequently, A.A.confessed to firing at a military jeep with a handgun. Eight days after being arrested, the Al Jalame military court extended Abed Akrou't's detention period for another eight days. After his court appearance to extend his detention, A.A.was put in a very small cell where it was very difficult to sleep. The walls were painted grey and had some protrusions. The light was very dim. A.A.spent 65 days by himself in this cell. At the end of the 65 day period, A.A.was taken to the interrogator who asked him to write another statement about the shooting incident with more details this time. He promised that if A.A.wrote it, he would allow him to call his family. A.A.did what the interrogator told him and was allowed to talk to his family. Shortly after writing the statement, A.A.was transferred to Telmond Prison. A.A.was charged with shooting at a military vehicle and sentenced by an Israeli military court. He is still being detained and is scheduled be released on 23 April 2010.

618. On 12 August 2008, A.'A., was arrested by Israeli soldiers from his family home around 2:00 a.m. He was taken out of the house and began calling to his mother to say goodbye, whereupon he was slapped violently on the neck by a soldier. A.'A. was blindfolded but not tied and was pushed into a jeep and made to sit on the floor. He was first taken to Huwwara Interrogation and Detention Centre and then to Al Jalame



Interrogation and Detention Centre. Several weeks before being arrested, A.'A. reportedly found an unexploded device on the ground which he picked up causing it to explode. He lost two fingers from his right hand which was still bandaged at the time of his arrest. He was first taken before an interrogator upon arrival at Al Jalame and was told that he should confess to all charges to be brought against him as otherwise he would not have the bandages around his hand changed and therefore his hand would rot. Afterwards he was taken to a small cell, which had no ventilation. The cell, which was reportedly called cell no. 36, had holes for ventilation only; it had no windows. A.'A. slept on a mattress on the ground. The cell had one dimmed yellow light that was kept on for 24 hours a day. The walls were grey, and had rough surfaces, so it was difficult to lean against them. A.'A. was kept in the cell for two days before being taken back for interrogation. For the interrogation, he was seated on a small chair. His feet and his left hand were tied to the chair. His right hand was kept free due to the injury. A.'A. was kept tied in this manner for a long time in the room without being interrogated or asked anything. "I will keep you alone until you rot," the interrogator said. During interrogation, the interrogator shouted at A.'A. and threatened him again that he would not change the bandages and would let his hand rot. Subsequently, A.'A. confessed different offences as he wanted to end the interrogation. On 4 September 2008, A.'A. was transferred to Telmond and then Megiddo Prison. A.'A. was charged with being a member of a banned organisation and sentenced by a military court. A.'A. was released on 12 February 2010.

619. On 30 October 2008, M.S. was arrested by Israeli soldiers from his family home around 1:30 a.m. Soldiers ordered everybody out of the house and one soldier threatened M.S. that anybody found inside the house would be shot at. M.S.'s hands were tied behind his back with plastic ties and a sack was placed over his head before he was placed on the floor of a jeep for transfer. During this transfer, M.S. was kicked and beaten by soldiers inside the vehicle. M.S. was first transferred to Huwwara Interrogation and Detention Centre and then to Al Jalame Interrogation and Detention Centre. M.S. was taken to cell 36, which was small and measured about 3x2 metres. There was a toilet inside the cell, but no shower. A mattress was on the floor. The walls were grey and rough. A yellow dim light was lit 24 hours a day, which hurt the eyes. He was kept for four days in the cell. He was given food through a hole in the door. Four days later, he was taken to the interrogation room, which had a desk and computer. There was a metal chair tied to the floor and placed in front of the desk. Shackles were also attached to the back of the chair. M.S. was forced to sit on the chair and his hands were tied behind his back with the shackles. M.S. was kept in this room sitting on the chair for about an hour, during which time no one was in the room except for him. One hour later, an interrogator who introduced himself as "Victor" entered the room and asked M.S. about his cell. When M.S. informed him about the cell, the interrogator told him that if he wants to get out of the cell, he would have to cooperate with the interrogator. He was then asked about his activities and when M.S. stated that he had not done anything endangering security he was taken back to the cell. The next day, M.S. was taken again for interrogation. He was accused of conspiracy to carry out a suicide bombing, possession of weapons, and throwing home-made grenades, which M.S. denied. The interrogator said that M.S.'s friends have already confessed. For ten days, M.S. was taken every day for interrogation, which followed the same scheme. On the 10th day of interrogation, M. S. confessed to all accusations made against him so as to get out of the cell. These include conspiracy to carry out a suicide bombing, possession of weapons, manufacturing of explosives, throwing home-made grenades, stones and Molotov cocktails. M.S. spent four more days in cell no. 36 before being transferred to Telmond, Megiddo and Damoun prisons. M.S. was sentenced by a military court to 45 months imprisonment and fined NIS 1,000. (US\$250). M.S. is still being held inside Israel and is scheduled to be released on 3 July 2012.

620. On 13 January 2009, A.S. and two friends went to throw stones at settler cars travelling on the by-pass road between Qalqiliya and Nablus, to protest the Israeli offensive in Gaza. One of the boys was killed when the stone he threw bounced back off a car and struck him in the head. The remaining boys flagged down a passing car for help. The car they flagged down belonged to a guard from a local Israeli settlement who called the army to arrest the boys. The arriving soldiers tied A.S.'s hands so tight they began to swell and turn blue. A.S. asked the soldiers to loosen the ties but they refused. A.S. was first taken to Ariel Police Station, then to Huwwara Interrogation and Detention Centre and then to Al Jalame Interrogation and Detention Centre. A.S. was taken to a small cell at Al Jalame. It had one yellow light that was on for 24 hours a day. It did not have any windows; only ventilation holes. The walls were grey, and had a rough surface. A.S. stayed inside this cell for 20 days. A.S. was interrogated three times, during which he confessed to having thrown stones three times. During interrogation, the interrogator shouted at him. A.S. had to sit with his head down and his hands were tied behind his back. The Al Jalame military court extended A.S.'s detention twice. After 20 days, A.S. was transferred to Megiddo Prison. A.S. was charged with throwing stones. He was convicted by a military court on 27 December 2009. His release is scheduled for 13 December 2011.

621. On 13 January 2009, M.Z. went with A.S. and another minor to throw stones at a settler by-pass road in protest at the Israeli offensive in Gaza (see above). One of the boys was killed when he was struck in the head by a rock. The other boys were arrested. Soldiers blindfolded M.Z. and tied his hands painfully tight. M.Z. was first transferred to Ariel Settlement, then Huwwara Interrogation and Detention Centre and then Al Jalame Interrogation and Detention Centre. He was kept in a small cell at Al Jalame, which had some gaps for ventilation and a bathroom. The light was yellow and dim and on around the clock. The walls were grey and had a rough surface so that a person could not lean against them. He was kept in the cell until 18 January 2009. On that day, he was taken out of the cell for the first time. He was taken to an interrogation room and made to sit on a small chair tied to the floor. They tied his hands to the chair and behind his back. He was kept in this position for about four hours, during which time he confessed to throwing stones twice and a Molotov cocktail once. M.Z. signed a statement that was written in Hebrew. During interrogation, the interrogator kept shouting at him and threatened him to break his head. After the interrogation, he was taken to another cell, which was in the basement. He had to sleep on the floor in this cell, which was very cold. The next day, he was again taken to the interrogation room to meet with the same interrogator. He told the interrogator the same as he told him before. After 20 days in Al Jalame, M.Z. was transferred to Megiddo Prison. M.Z. was charged with throwing stones at Israeli cars. He was convicted by a military court on 27 December 2009. His release is scheduled for 13 December 2011.

622. On 21 January 2009, Israeli soldiers raided M.S.'s house but he was not there. The next day, he voluntarily gave himself up to the soldiers. M.S. was then picked up by soldiers in his village and transferred to Yakir Military Base. He was not tied or blindfolded. He was then transferred to Huwwara Interrogation and Detention Centre and then to Al Jalame. There, he was kept in a narrow cell that had no windows, just some gaps for ventilation. The walls were grey. The light was dim and yellow. It had a bathroom and a concrete bed. He spent two days in the cell without being asked anything. Afterwards, he was taken to an interrogator. The interrogator seated M.S. on a metal chair and tied his hands to the chair behind his back. He was accused of throwing Molotov cocktails and stones. M.S. was then taken back to the cell, and kept there for 24 hours. Then he was taken back to the interrogation room and the same interrogator. The interrogator said that he would help him because he turned himself in. M.S. confessed to throwing Molotov cocktails and stones. M.S. was held for 20 days in Al Jalame before being transferred to Megiddo Prison. He was accused of throwing Molotov cocktails and was sentenced by a

military court to 28 months imprisonment. M.S. is scheduled to be released on 22 May 2011.

623. On 22 January 2009, T.K. was arrested by Israeli soldiers from the family home around midnight. He was pushed to the ground and his hands were tied tightly behind his back with plastic ties. T.K. was blindfolded and made to sit on the floor of a jeep for transfer. T.K. was first transferred to Huwwara Interrogation and Detention Centre before being transferred to Al Jalame Interrogation and Detention Centre. From 22 to 25 January 2009, T.K. was kept in a small cell of approximately 3x2 meters. Its walls had a rough surface and they were grey; so one could not lean against them. It had no windows; only gaps for ventilation. The cell had only one dim yellow light that was lit the whole time and hurt the eyes. The cell had a toilet but no shower. He was provided with food through a hole in the door. On 25 January 2009, T.K. was taken to an interrogation room. There was a small metal chair in this room which was difficult to sit on. He was ordered to sit on this chair that was tied to the ground, and he was tied to the chair. He sat in this room for about an hour without being asked anything. Afterwards, an interrogator speaking fluent Arabic entered the room and told T.K. to confess. If he confessed he would be treated well. The interrogator made several accusations against him but T.K. did not confess to anything. This interrogation lasted about an hour. Afterwards, he was taken back to the cell and kept there for two weeks. He was not allowed to leave the cell. After two weeks, he was told that the interrogation was over and that he would be moved to a regular cell with the other detainees. T.K. was placed in a room with eight detainees, in addition to two detainees of his age. The room was big and sufficiently ventilated; it also had a television. In this cell, where he stayed for five days, T.K. signed confessions written by an informant who claimed to be from the West Bank and a security detainee in charge of the detainees. Afterwards, T.K. was taken back to the cell and the interrogation room, where he was seated again on the same metal chair. He was again tied. The same interrogator entered the room with his signed confessions. T.K. was then taken back to his cell where he spent 13 days, during which he was taken to the interrogation room every two days. T.K. confessed to all accusations made against him by giving a statement to the police. On 22 February 2009, T.K. was transferred to Megiddo Prison. T.K. was convicted by a military court to 42 months of imprisonment. He is scheduled to be released on 22 July 2012.

624. On 30 January 2009, M.R. was arrested by Israeli soldiers from the family home around 1:30 a.m. M.R. had his hands tied behind his back and was made to sit on the ground for about half-an-hour, before being blindfolded and placed in the back of a truck. The truck arrived at a military base and M.R. was taken to a clinic. At the entrance to the clinic a soldier grabbed the back of his head and slammed it against the clinic door, causing bruising to his forehead and resulting in a headache. Inside the clinic the doctor asked him a few general questions and filled in a questionnaire. M.R. hands were then retied and he was blindfolded again and taken outside where he was made to sit on his knees on the ground until around 10:00 a.m., a period of at least five hours. Afterwards, M.R. was transferred to Huwwara Interrogation and Detention Centre and then to Al Jalame Interrogation and Detention Centre. On arrival at Al Jalame, he was taken to cell 36 which measured about 2 x 2.5 metres. However, another detainee was already inside the cell. As the cell was very narrow, the two detainees had difficulty to sleep. The walls of the cell were grey and had rough surfaces so that one could not lean against them. There were no windows, just one gap for ventilation. A yellow dim light was lit 24 hours. M.R. remained in cell 36 for over two days before being taken for interrogation on 1 February 2009. M.R. was not tied and was seated in an ordinary chair. The interrogator asked him why he endangered State security. M.R. replied that he had not done anything to endanger State security. The interrogation lasted 15 minutes and he was then taken back to cell 36 for another day. On 2 February 2009, M.R. was taken by a prison guard to another part of the detention centre where three other children were located and conditions were good. While in this section,

M.R. informed two men, who introduced themselves as a detainee working with the Red Cross (Abu Taha) and the Fateh representative in the prison (Abu al-Abed), that he had thrown stones at Israeli cars and military vehicles. On 5 February 2009, M.R. was taken back to cell 36. Half-an-hour later he was taken back to the interrogation room and forced to sit on a small plastic chair that was tied to the floor. This time his hands were tied behind his back to the chair. The interrogator then accused M.R. that he had thrown stones at Israeli cars. When M.R. denied, the interrogator began shouting and said "I'll beat the hell out of you if you don't confess." The interrogator then showed the confession that M.R. had given to the two men. M.R. then confessed to throwing stones but denied a further accusation of throwing Molotov cocktails. The interrogation lasted around three hours during which time M.R. was tied to the chair. At no time during the interrogation was Mohammad informed that he had any rights. After his interrogation, M.R. was moved to a larger cell where he remained until 23 February 2009, when he was transferred to Megiddo Prison. M.R. has not yet been sentenced.

625. On 24 February 2009, U.M. was arrested by Israeli soldiers from his family home around 12:30 a.m. U.M.'s hands were tied tightly behind his back and he was blindfolded before being placed inside a military vehicle. U.M. was first taken to Huwwara Interrogation and Detention Centre and then to Al Jalame Interrogation and Detention Centre. Upon arrival at Al Jalame, he was taken to a doctor who examined him and was then taken to a cell that measured about 2x 2,5 meters. The cell was closed from all sides and had only two gaps for ventilation. Its walls were grey and they had a rough surface so that it was difficult to lean against them. There was a toilet inside the cell. There were no mattresses and one had to sleep on the floor. U.M. was provided with food through a hole in the door. The light in the cell was yellow and dim. On 25 February 2009, he was taken to an interrogation room. An interrogator, who introduced himself as "Franco" was waiting for him in the room. U.M. was made to sit on a small low metal chair, which was tied to the floor in the middle of the room. U.M.'s hands were tied to the chair with shackles that were already tied to the chair. The interrogator asked U.M. general questions about his cousin, who had been arrested 25 days before. U.M. denied having done anything. In the course of the interrogation, the interrogator threatened U.M. to break his head if he did not confess. After the interrogation, U.M. was taken back to the cell where he remained for eight days without seeing anyone. Afterwards, he was taken to another section of the detention centre into a big room. While in this room, two persons approached U.M. and introduced themselves as Abu Taha (50) and Abu al-Abed (40). They displayed a great interest in U.M.'s situation. Everything that U.M. told them was written down by Abu al-Abed. Afterwards, the prison guard took U.M. to the interrogation room where "Franco" was waiting with the papers Abu al-Abed had written earlier. U.M. first denied everything, but when the interrogator put pressure on him, U.M. confessed to all charges against him. On the same day, the police took his statement and U.M. was then taken back to the cell. After 40 days at Al Jalame, U.M. was transferred to Megiddo Prison. U.M. was accused of affiliation with a banned organisation and preparing a Molotov cocktail. U.M. has not yet been sentenced.

626. On 10 March 2009, M.A. was arrested by Israeli soldiers from the family home around 3:30 a.m. While getting dressed, a soldier hit M.A. in the neck causing him to fall to the floor. His hands were then tied with plastic cords behind his back and he was blindfolded. M.A. was then taken outside and placed on the floor of a waiting jeep. Once inside the jeep, M.A. was repeatedly kicked and slapped in the face for around five minutes. He was first transferred to Huwwara Interrogation and Detention Centre where he remained for six days before being transferred to Al Jalame Interrogation and Detention Centre. Upon arrival at Al Jalame, he was taken to cell 36, which was very small and measured about 3 x 2 meters. The walls were grey and had rough surfaces. There was a dim yellow light which was lit 24 hours per day inside the cell. M.A. had to sleep on the floor. The cell had no

windows, only some gaps allowing the air to enter. The next morning, M.A. was taken for interrogation. An interrogator, who introduced himself as Roe, accused him of having contacts with an external informant. M.A. was tied to a low metal chair he was sitting on. When M.A. refused to confess, the interrogator said that he will be locked up in the cell. M.A. was then taken back to the small cell where he remained for five days. Afterwards, he was taken again for further interrogation. During the interrogation, the interrogator said that he knew everything about Monther Amarnah. When he denied the accusations, the interrogator started shouting and insulting him. Afterwards, M.A. was taken back to the cell. Three days later, M.A. was again taken for interrogation. This time, he confessed to having been in contact with an external informant due to the big pressure he felt from the interrogator. Later on, M.A. was moved to a larger cell and then to Megiddo Prison. M.A. was finally released from detention on 10 September 2009.

#### **Communication received**

627. At the time this report was finalized, no response to this communication had been received.

#### **Communication sent**

628. On 21 June 2010, the Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an allegation letter concerning the **violent arrest, denied access to a lawyer as well as the use, or threatened use, of sexual assault during interrogations by Israeli security and law enforcement personnel against nine Palestinian children in order to extract confessions.**

629. Between January 2009 and April 2010, Israeli soldiers, policemen, Israeli Security Agency (ISA) interrogators and prison officers, have violently arrested, often from their homes, nine children aged between 13 and 16 years. These arrests have allegedly been accompanied by violence and property damage. During these arrests, children were reportedly blindfolded and their hands tied tightly behind their backs with plastic ties that have reportedly caused injuries in their flesh.

630. On arrival at interrogation and detention centres, children were allegedly denied access to a lawyer, for days or weeks, until the end of the interrogation process and once confessions were obtained. According to the information received, abusive and threatening techniques are being employed against Palestinian children during interrogation, including sexual assault and threats of sexual assault, in order to obtain confessions.

631. Furthermore, children were reportedly made to sign confessions in Hebrew, a language few of them understand. According to the allegations received, these confessions constitute primary evidence against the children in military courts.

632. According to reports received, the following children have been victims of the alleged incidences. The list below includes information about name, sex, age, occupation, nationality as well as date and place of arrest and place of sexual assault or threat of sexual assault:

1. N.M.I.R. – Male, 15 years
  - Student
  - Resident of Qalqiliya, Occupied Palestinian Territory
  - Arrested on 6 March 2009 from the family home near Qalqiliya
  - Qedumim Settlement, Occupied Palestinian Territory

2. I. A. I. Z' – Male, 16 years
  - Student
  - Resident of Bethlehem, Occupied Palestinian Territory
  - Arrested at on 4 May 2009 from the family home near Bethlehem
  - Etzion Interrogation and Detention Centre, Occupied Palestinian Territory
3. M. A. A.-H al-S – Male, 15 years
  - Student
  - Resident of Hebron, Occupied Palestinian Territory
  - Arrested on 29 July 2009 from the family home near Hebron
  - Kirya Arba Police Station, Occupied Palestinian Territory
4. M.K.K.al-S. – Male, 16 years
  - Student
  - Resident of Hebron, Occupied Palestinian Territory
  - Arrested at 2:00am, on 27 October 2009
  - Arrested from the family home near Hebron
  - Etzion Interrogation and Detention Centre, Occupied Palestinian Territory
5. M.Z.M.al-Q. – Male, 15 years
  - Student
  - Resident of Hebron, Occupied Palestinian Territory
  - Arrested on 6 January 2010 from the family home near Hebron
  - Etzion Interrogation and Detention Centre, Occupied Palestinian Territory
6. U.Z.Y. 'E - Male , 13 years
  - Student
  - Resident of Ramallah, Occupied Palestinian Territory
  - Arrested on 6 January 2010 at Qalandiya Checkpoint, near Ramallah
  - Unknown location
7. Q.F.M.H. – Male, 15 years
  - Student
  - Resident of Hebron, Occupied Palestinian Territory
  - Arrested on 13 January 2010 from the family home near Hebron
  - Unknown location
8. A.S.I.S. – Male, 13 years
  - Student
  - Resident of Bethlehem, Occupied Palestinian Territory
  - Arrested on 22 April 2010 from the family home near Bethlehem
  - Unknown location

9. S.A.Y. al-J. – Female, 16 years
- Student
  - Resident of Ramallah, Occupied Palestinian Territory
  - Arrested on 30 April 2010 at Anata checkpoint, near Jerusalem
  - Anata checkpoint; an unknown location in West Jerusalem; and Neve Tertzze prison, Israel.

633. Serious concern is expressed about the physical and mental integrity of the children listed above. In this connection, concern is expressed about the violent arrest of these Palestinian children and denied access to a lawyer during the detention period. Further serious concern is expressed about allegations of the use of abusive and threatening interrogation techniques, including sexual assault and threats of sexual assault, in order to obtain confession from children, which could then be used as primary evidence in military courts.

#### **Communication received**

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

#### **Communication sent**

635. On 3 November 2010, the Special Rapporteur, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the conviction of Mr. Ameer Makhoul. Mr. Makhoul is the General Director of Ittijah – a union of Arab community-based associations, a network of Arab NGOs in Israel which holds consultative status with the United Nations Economic and Social Council – and is also Chairperson of the Public Committee for the Defence of Political Freedom where he monitors restrictions on the political freedoms of Arab citizens in Israel. Mr. Makhoul was the subject of a previous Urgent Appeal by the Chair-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 situation of human rights defenders sent on 21 May 2010. The response of your Excellency's Government to the above appeal was received on 2 August 2010.

636. On 27 October 2010, Mr. Ameer Makhoul was convicted by Haifa district court of involvement in espionage operations with the Lebanese organization Hezbollah. It is reported that Mr. Makhoul was found guilty, subsequent to confession which formed part of a plea bargain reached between the prosecution and defence, on charges of contact with a foreign agent, espionage and aggravated espionage. Mr. Makhoul also pleaded guilty to charges of conspiracy to aid the enemy in a time of war, a charge which was later dropped.

637. Concern has been expressed that Mr. Makhoul may have confessed to these crimes as a result of torture or the use of other forms of violence against him while in detention. It is reported that Mr. Makhoul previously stated in the Magistrate's Court in Petah Tikva that he had admitted to false accusations under duress, due to the harsh methods of interrogation to which he was subjected. Said methods of interrogation reportedly included sleep deprivation and constant interrogation while being tightly bound to an undersized chair in such a way as to cause him extreme pain.

638. Mr. Makhoul is due to be sentenced in December.

639. Concern is expressed that the conviction of Mr. Ameer Makhoul may be related to his legitimate and peaceful human rights activities. Furthermore, in light of the allegations

of ill-treatment and torture in detention, grave concern is expressed for Mr. Makhoul's physical and psychological well-being.

#### **Communication received**

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

#### **Comments and observations of the Special Rapporteur**

641. The Special Rapporteur regrets that no response to the three communications summarized above has been received to date. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and calls upon the Government of Israel to transmit responses to the outstanding communications at the earliest possible date.

### **Kazakhstan**

#### **Communication sent**

642. On 19 January 2011, the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding **the situation of a group of refugees and asylum-seekers**, currently held in a pre-trial detention center of the Ministry of Justice and in the remand center of the Department of the National Security Committee (DNSC) in Almaty, Kazakhstan, awaiting their deportation to Uzbekistan.

643. According to the information received, a group of 28 individuals face extradition to Uzbekistan on charges of membership in illegal religious or extremist organizations and charges of attempting to overthrow the Constitutional Order of Uzbekistan. Reportedly, some of them had previously been detained and sentenced to different terms of imprisonment on charges brought against them under Article 159 (Attempts to Constitutional Order), Article 223 (Illegal Exit from or Entry in Uzbekistan), Article 248-1 (Illegal Possession of Arms, Ammunition, Explosive Substances, or Explosive Assemblies), Article 244-2 (Establishment, Direction of or Participation in Religious Extremist, Separatist, Fundamentalist or Other Banned Organizations) of the Criminal Code of Uzbekistan. Some claimed to have been subjected to torture and ill-treatment while in detention in Uzbekistan. It is also reported that the above mentioned articles of the Criminal Code of Uzbekistan are the most commonly used articles to indiscriminately target pious Muslims and dissidents of the regime in Uzbekistan.

1. **Mr. Akhmad Boltoiev**, born in 1968.
2. **Mr. Saidakbar Zhalolkhonov**, born in 1974.
3. **Mr. Kobiljon Kurbanov**, born in 1966.
4. **Mr. Ulugbek Ostonov**, born in 1973.
5. **Mr. Isobek Pardaiev**, born 1987.
6. **Mr. Oibek Pulatov**, born in 1987.
7. **Mr. Uktam Rakhmatov**, born in 1989.
8. **Mr. Sirojiddin Talipov**, born in 1986.
9. **Mr. Otabek Sharipov**, born in 1978.



10. **Mr. Akmoljon Shodiev**, born in 1977.
11. **Mr. Olomjon Kholduraiev**, born in 1975.
12. **Mr. Sarvar Khurramov**, born in 1983.
13. **Mr. Bakhridin Nurillaiev**, born in 1983.
14. **Mr. Ravshan Turaiev**, born in 1969.
15. **Mr. Toirzhan Abdusamatov**, born in 1974.
16. **Mr. Faizullakhon Akbarov**, born in 1990.
17. **Mr. Sukhrob Bazarov**, born in 1978.
18. **Mr. Shukhrat Botirov**, born in 1986.
19. **Mr. Mukhitdin Gulamov**, born in 1967.
20. **Mr. Dilbek Karimov**, born in 1987.
21. **Mr. Abdor Kasymov**, born in 1983.
22. **Mr. Oibek Kuldashev**, born in 1982.
23. **Mr. Tursunboy Sulaimanov**, born in 1976.
24. **Mr. Shukhrat Kholbaiev**, born in 1973.
25. **Mr. Alisher Khoshimov**, born in 1969.
26. **Mr. Ma'rufa Fahriddin O'g'li Yuldoshev**, born in 1990.
27. **Mr. Abduazimkhodja Yakubov**, born in 1982.

644. All the above mentioned individuals, except Mr. Tursunboy Sulaimanov, are citizens of Uzbekistan.

645. Between 2006 and 2010, fearing prosecution in Uzbekistan, the above mentioned individuals fled to Kazakhstan, and upon arrival applied for refugee status with the United Nations High Commissioner for Refugees (UNHCR). Reportedly, some of them were granted UNHCR refugee status, others have had their application pending consideration.

646. In January 2010, following the entry into force of the Law "On Refugees" in Kazakhstan, the Government appealed to the UNHCR office to delegate to the State Central Commission the procedure of determining and granting refugee status to the citizens of the Commonwealth of Independent States (CIS) countries and China (People's Republic). Reportedly, as of March 2010, the Government does not recognize the UNHCR certificates, and granting the asylum seeking status has been performed anew.

647. It is further reported that on 9 June 2010, following the early morning raids by the migration police officers, at least 45 men and one woman, all refugees and asylum-seekers, including the above-mentioned individuals, were arrested by security forces and members of the migration police at their homes in the south of Almaty, and have been since put in custody in a remand centre of the National Security Committee and in the Department of Internal Affairs of Kazakhstan. It is reported that the security members and the migration police did not present any judicial warrant, nor did they explain the reasons for their arrest. Those who were later released following lengthy interrogations by migration police have reported to have been subjected to beating and ill-treatment by police officers. It is further reported that later on the same day, following the extradition request reportedly issued by Uzbekistan, the Almaty district court issued an arrest authorization for the above mentioned individuals.

648. Reportedly, families and lawyers have been unable to gain access to the detained persons since their arrest on 9 June 2010, and the authorities failed to confirm their whereabouts. It is further reported that the above mentioned persons did not have access to legal counsel, and had their applications for refugee status rejected by the State Central Commission on 27 August 2010, about which they were informed on 17 September 2010.

649. Concern is expressed that the arrest and extradition request of the above mentioned persons may be related to their religious or political convictions, or affiliation with certain religious and political groups in Uzbekistan. Further concern is expressed about the physical and mental integrity of the above mentioned individuals. Finally, serious concern is expressed about the reported forthcoming extradition of the above mentioned individuals to Uzbekistan where there are substantial grounds to believe that they would be in danger of being subjected to torture and that harsh sentences, including life-term imprisonment would be imposed on them.

#### **Communication received**

650. In a letter dated 14 March 2011, the Government sent a response to the communication summarized above.

#### **Comments and observations of the Special Rapporteur**

651. The Special Rapporteur welcomes the response from the Government of Kazakhstan. However, at the time of finalizing the present report, no translation was available. The replies will therefore be included in the next year's report.

### **Kuwait**

#### **Communication sent**

652. On 11 June 2010, the Special Rapporteur, 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 Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the detention of and charges against **Mr. Mohammad Abdul Qadar Al-Jasim**, journalist and lawyer.

653. According to information received, on 1 April 2010, a Kuwaiti trial court convicted Mr. Al-Jasim on criminal slander charges based on remarks he made at a private gathering in a house of a member of parliament at which he allegedly questioned the Prime Minister's fitness for office and called for his removal. He was sentenced to six months in prison, but Mr. Al-Jasim has reportedly appealed his sentence. His sentence was thus suspended pending the appeal.

654. On 11 May 2010, Mr. Al-Jasim was summoned to the department of National Security for interrogation, and was allegedly questioned for more than fifteen hours over a period of two days by state security officers. From 11 to 18 May, Mr. Al-Jasim allegedly went on hunger strike to protest his detention. He has been held in detention since then.

655. On 24 May 2010, Mr. Al-Jasim was presented before the court in Kuwait City for the first session of his trial on charges of "instigating to dismantle the foundations of Kuwaiti society", "slight to the personage of the Emir", and "instigating to overthrow the regime". The lawsuit was reportedly filed by Shaikh Nasser Sabah al-Ahmed al-Sabah, Minister of Amiri Diwan Affairs and the son of the Emir. These charges are linked to 32 articles published on his personal blog "Al Meezan" over the last five years, which allegedly criticised public officials in connection with the exercise of their offices.

656. On the same day, public prosecutor's office reportedly banned coverage of the case in all media, without providing any legal justification or compelling reasons for such a ban.

657. On 7 June 2010, Mr. Al-Jasim was presented before the court for the second session of his trial. During the session, Mr. Al-Jasim and his lawyers allegedly complained that according to Article 44 of the Law on Penal Procedures, the 21-day maximum period of precautionary detention of Mr. Al-Jasim ended on 31 May 2010 and, since there had been no court order to renew his detention, his continued detention is thus illegal. The defence team also reportedly complained that prior to both trials, Mr. Al-Jasim had not been given due notification of the session, in breach of the Law on Penal Procedures. It was also allegedly claimed that Mr. Al-Jasim's detention, alongside convicted prisoners in cases related to State security, is a violation of articles 25 and 26 of the Law on Prisons. The case has been adjourned until 21 June 2010 to hear the testimony of the investigation officer.

658. Over his career, Mr. Al-Jasim has reportedly been the object of more than 20 formal complaints filed because of his writings and statements.

659. Concern was expressed that the detention of and charges against Mr. Al-Jasim constitute an attempt to stifle the right to freedom of opinion and expression, in particular expression that is critical of Government officials. Moreover, concern was expressed that the ban of any media coverage of the case violates the public's right to receive information.

#### **Communication received**

660. At the time this report was finalized, no response to this communication had been received.

#### **Comments and observations of the Special Rapporteur:**

661. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to the communication dated 11 June 2010. The Special Rapporteur considers response to her communications an important part of the cooperation between governments and her mandate and calls upon the Government of Kuwait to provide details about the issues raised in the aforementioned communication at its earliest convenience.

### **Kyrgyz Republic**

#### **Communication sent**

662. On 20 July 2010, the Special Rapporteur, together with the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Chair-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning the large number of detentions and alleged torture and ill-treatment of ethnic Uzbeks in Osh and Djalal-Abad Provinces in the Kyrgyz Republic.

663. Since the violence that erupted in June in the south of the Kyrgyz Republic, more than 1,000 young ethnic Uzbeks have been detained. Additionally, more than 600 men aged between 17 and 30 have been detained in several locations, including Kyzyl-Kystak Village and other locations in Narima region and in two Mahallas in Osh. In Shait-Tepe district, 470 men were detained. There are reports of women and a minor aged 14 also being detained. These detentions have taken place in the context of daily raids in Uzbek neighborhoods, without arrest warrants, and usually carried out by military and police officers. In some instances, the security forces have held the detainees' families at gunpoint and threatened to shoot them if they protested the detention. Most families are not informed

of where their relatives are taken upon arrest, leaving them without news of their whereabouts for hours or even days.

664. Once detained, the victims are taken either to police stations or to detention centres, including the Osh City Police Department, Osh Province Police Department, local police precincts and the National Security Service, where they are reportedly subjected to torture and ill-treatment. This includes removing fingernails, inserting sharpened sticks between the nails and the flesh, asphyxiation, burning with cigarette stubs, continuous beatings with rubber batons or rifle butts until the detainees sing the Kyrgyz hymn and speak Kyrgyz with no accent, punching and kicking. The purpose of the torture and ill-treatment has been to obtain confessions and names of persons who may be in possession of arms. On 11 July, one man died following his release, reportedly as a result of the ill-treatment received during his detention. The families of the detainees are often asked to pay substantial amounts of money for their relatives' release.

665. Information was also received concerning men in military uniforms who are increasingly present in public health institutions, including hospitals, hampering access to medical attention for the victims due to fear of reprisals. In addition, some doctors are reportedly refusing to issue medical certificates for those people who have been subjected to torture or ill-treatment, or death certificates for those who died during or after the violence. Medical examinations of detainees who allege they have been tortured or ill-treated are also routinely refused.

666. Very few complaints of torture and ill-treatment have been received by the authorities, as the victims and their families are afraid of reprisals. The response by the authorities has been that they cannot take action unless a complaint is filed.

667. For those in detention, access to a lawyer of their choice and the right to consult with a lawyer in private are always denied. Many lawyers have also been threatened, insulted and prevented from meeting with their clients. There are also reports of lawyers and family members being beaten by ethnic Kyrgyz upon arrival at police stations or other detention facilities, while the authorities simply watched. On 11 July, the head of police promised to provide armed escorts to one family visiting the pre-trial detention facility.

668. Concern is expressed regarding the physical and psychological integrity of the hundreds of ethnic Uzbeks allegedly detained following the violence that erupted in June 2010.

#### **Communication received**

669. By letter dated 2 November 2010, the Government of the Kyrgyz Republic indicated that the facts set out concerning the detention of possibly more than 1,000 ethnic Uzbeks do not reflect reality. As at 11 October 2010, law enforcement agencies in the city of Osh and in Osh and Jalal-Abad provinces had arrested and brought criminal charges against 287 people for murder, rape and participation in mass disturbances. The courts ordered 258 people to be detained on remand; non-custodial preventive measures were ordered in respect of 29 people.

670. Following investigations, 111 criminal cases against 239 people were sent for trial. Investigations in the remaining cases are still ongoing.

671. Nor is there any foundation to the Rapporteurs' conclusions that the law enforcement agencies have been intimidating lawyers defending the interests of detainees, as evidenced by the fact that no complaints from lawyers have been registered with the law enforcement agencies.

672. Furthermore, the competent national authorities have been taking all necessary measures to guarantee respect for and observance of detainees' rights and freedoms. The

Kyrgyz Republic is unfailingly committed to the provisions of the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel Forms of Treatment.

673. From the very beginning of the disturbances that occurred in June in southern provinces of the country, appropriate coordination between the prosecution services, internal affairs agencies, national security services and local authorities was ensured. The public was kept informed about the steps being taken by the authorities to stabilize the situation across the country.

674. In order to ensure due collaboration among the teams set up to investigate the results of the mass disturbances, which led to deaths, destruction of property and other particularly serious offences in the city of Osh and in Osh, Jalal-Abad and Batken provinces, an interdepartmental command was established on 16 June 2010 in accordance with a joint instruction by the heads of the law enforcement agencies.

675. With the aim of preventing violations of civil rights during special operations, investigations and inquiries, the heads of the law enforcement agencies and security forces issued a second joint interdepartmental instruction on 7 July 2010, intended to strengthen the authorities' role in ensuring lawful behaviour, professional and military discipline, and moral and ethical standards, among individual members of the law enforcement agencies and security services on the ground.

676. Instructions were given concerning the need to ensure strict respect for the law and prevent unlawful actions by officials of the law enforcement agencies of Kyrgyzstan. On the ground, checks are constantly being carried out to ensure that individuals held on suspicion of having committed criminal offences are detained lawfully. Anyone detained, arrested or remanded in custody has access to qualified legal defence, in accordance with current criminal procedure legislation.

677. If unlawful acts that infringe civil rights and freedoms come to light, the liability of officials is investigated as a matter of course, regardless of their position, and criminal prosecutions are brought where necessary.

678. Human rights organizations and international organizations, together with the Office of the Ombudsman, have met and talked to individuals affected. Concerning the existence of torture and ill-treatment of defendants held in places of detention in the south of the country, the Office of the Ombudsman has been working closely with national human rights bodies to deal with all matters raised. A working group was formed from among Office officials and immediately visited the south of the country to hold meetings with defendants. Analysis of their meetings revealed that not all defendants wished to cooperate with the group's inquiries and that not all defendants were guilty as charged. Officials of the Office carried out their own investigations and follow-up, the results of which indicated that law enforcement agencies had acted lawfully in restoring order and pursuing their investigations. In respect of these events, various press conferences, meetings with national leaders and discussions with national human rights organizations have been held to address the issues raised.

679. Public consultation is ongoing, while work with national investigative bodies is continuing to identify violations of individuals' rights and freedoms. Officials of the Office of the Ombudsman attend legal hearings on various human rights issues on a permanent basis. They give advice and monitor the situation of victims and those affected.

680. It should be pointed out that the information presented in your letter is indicative of bias and a one-sided approach, as it does not fully reflect reality. While it cannot be said that none of the events took place, the letter displays a certain harshness and ignorance. All

the events that occurred in the south of the country are the subject of constant discussion by various human rights bodies, with a range of opinions and suggestions being voiced.

#### **Comments and observations of the Special Rapporteur**

681. The Special Rapporteur appreciates the response by the Government received on 2 November 2010. She welcomes a number of measures taken to investigate the violence, in particular the establishment of an interdepartmental command in the aftermath of the mass disturbances in accordance with the joint instruction ordered by the heads of the law enforcement agencies. She notes that 111 criminal cases against 239 people were sent for trial.

682. With regard to the issue of torture and ill-treatment of defendants in places of detention in the south of the country, the Special Rapporteur welcomes that the Office of the Ombudsman has been working closely with national human rights bodies to address the cases raised.

683. The Special Rapporteur would greatly appreciate receiving information on the outstanding criminal cases. She remains concerned at the alleged intimidation of lawyers and would appreciate receiving information on measures taken to prevent this happening and the measures taken to address this issue and ensure that lawyers are able to exercise their functions freely and without fear of intimidation.

#### **Communication sent**

684. On 12 August 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders sent an allegation letter concerning the situation of Mr. **Nurbek Toktakunov**. Mr. Toktakunov is a lawyer and the defence attorney of human rights defender Mr. Azimjan Askarov, whose situation was subject to an urgent appeal dated 22 June 2010 by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

685. According to the information received, on 23 June 2010, Mr. Toktakunov was allegedly threatened near the Jalalabad police station by a crowd in relation to his legal assistance provided to Mr. Askarov.

686. On 2 August 2010, Mr. Toktakunov was meeting Mr. Askarov, the director of the human rights organization Vozdukh (Air) in the Jalalabad police station when policemen reportedly ended the meeting. Mr. Toktakunov was told that this measure had been taken for security reasons since the family of a man killed during riots between ethnic Uzbeks and Kyrgyzs was on his way to the police station.

687. An unknown man, seeing Mr. Toktakunov through the police station window, threatened to go inside and to punish him for defending Mr. Askarov. A few minutes later, the man, together with another man and women allegedly entered the police station, surrounded Mr. Toktakunov, tore his shirt, took his briefcase and threatened him with reprisal if he did not withdraw from Mr. Askarov's case. It is alleged that the policemen present did not try to stop the attack until representatives of the Regional Prosecutor's Office in Jalalabad intervened.

688. Concern was expressed that the attack against Mr. Toktakunov might be directly related to his peaceful activities in the defense of human rights and in particular the legal assistance provided to Mr. Askarov.

**Communication received**

689. In a letter dated 16 December 2010, the Government responded to the communication sent on 12 August 2010.

690. The internal security service of the Ministry of Internal Affairs has carried out an official review of this information.

691. The review ascertained that, at approximately 3 p.m. on 2 August 2010, in the course of inquiries into criminal case No. 166-10-159, remand prisoner A. Askarov, who was being held in the Bazar-Korgon district temporary holding facility for offences under article 97, paragraphs 2 (4), 2 (6), 2 (9), 2 (10), 2 (15) and 2 (16), article 299, paragraphs 2 (1) and 2 (3), article 233, paragraphs 1, 2 and 3, and article 240 of the Criminal Code, was escorted to the district procurator's office, where investigators of the Jalal-Abad provincial procurator's office were present.

692. On completion of the inquiries, Mr. Askarov, accompanied by his lawyer, N. Toktakunov, was escorted back to the holding facility at the internal affairs office (militia station). There, Mr. Toktakunov requested a private interview with his client and was provided with a room on the premises.

693. At that moment, relatives of the slain Bazar-Korgon district militia officer, Captain M. Sulaimanov, came to the station asking to see the district militia chief. To avoid a conflict between the relatives of Mr. Sulaimanov and Mr. Askarov, the militia chief gave orders for Mr. Askarov to be placed in the cells. Captain Sulaimanov's relatives were then allowed onto the premises. Mr. Toktakunov was escorted from the station by militia officers and officials working for the provincial procurator's office.

694. In addition, the review found that Mr. Toktakunov's claims — that he had been surrounded near the militia station on 23 June 2010 by a hostile crowd of local inhabitants threatening reprisals against him for defending an ethnic Uzbek and that Mr. Askarov's wife, Turdihon Askarova, had been assaulted by Mr. Sulaimanov's relatives on the premises of the militia station on 21 July 2010 — were not corroborated.

695. This is also borne out by the fact that Ms. Askarova herself did not file a report on her assault with the militia station and that the matter of her having sustained bodily injuries was not recorded in the Bazar-Korgon district militia log.

696. The findings of the review have been transmitted to the Jalal-Abad provincial procurator's office to be included as evidence in the above-mentioned criminal case.

**Comments and observations of the Special Rapporteur**

697. The Special Rapporteur thanks the Government for its response to the communication dated 12 August 2010. She would appreciate receiving detailed information on any investigations conducted in relation to the allegations of ill-treatment and intimidation of the lawyer Mr. Toktakunov. The Special Rapporteur wishes to reiterate the need to guarantee the right of lawyers to freely represent their clients and perform their professional activity without fear, intimidation and interference. In this respect, the Special Rapporteur would like to stress once again the importance for Governments to respect and take into account the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, aimed at assisting Member States to protect and ensure the proper role of lawyers.

### **Communication sent**

698. On 18 August 2010, the Special Rapporteur on the independence of judges and lawyers, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding **Mr. Azimzhan Askarov**, director of Vozdukh, a human rights organization which documents police ill-treatment in detention. Mr. Askarov was the subject of a joint urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 22 June 2010.

699. According to the information received, Mr. Azimzhan Askarov, an ethnic Uzbek, was detained by the police on 15 June, suspected of being involved in the death of a police officer during the recent violence in the country.

700. On 26 July, the Jalal-Abad city court upheld the decision of the prosecutor's office not to investigate allegations that Mr. Askarov had been tortured following his detention. The authorities have argued that the large bruises on Mr. Askarov's body were produced by his cellmate. In addition, the General Prosecutor's Office indicated that Mr. Askarov had confirmed that he had not been ill-treated. Mr. Askarov's lawyer has not been allowed to meet with his client in private, and believes he is afraid of further ill-treatment if he files a complaint.

701. During the time Mr. Askarov has been in detention, his sister-in-law and his lawyer were both attacked when they went to visit him at the police detention centre. The police reportedly failed to intervene to stop the aggression.

### **Communication received**

702. In a letter dated 21 August 2010, the Government responded to the communication sent on 18 August 2010.

703. After mass disorders in the village of Bazar-Korgon, Dzhahalal-Abad province, on 13 June 2010, the organizers of the disorders resorted to particular brutality in killing local police inspector M. Sulaimanov; seven other officers were wounded to varying degrees.

704. The same day, the procurator's office in Bazar-Korgon district, Dzhahalal-Abad province, initiated criminal proceedings for incitement to ethnic, racial, religious or interregional hatred, mass disorders and murder of a member of the law enforcement agencies and the military.

705. On 16 June 2010, Mr. Azimzhan Askarov and another individual were arrested on suspicion of having committed the above-mentioned crime, and taken into custody at the Bazar-Korgon district internal affairs office. Mr. Askarov's house was searched with the authorization of the Bazar-Korgon district procurator, and the following were found in a bookcase and removed: 10 cartridges for a 9-mm calibre PM pistol; various books and disks calling for the incitement of inter-ethnic discord.

706. Mr. Askarov and another individual were charged under articles 233 (mass disorder) and 299 (inciting ethnic, racial, religious or interregional hatred) of the Criminal Code. The following day, the Bazar-Korgon district court ordered their pre-trial detention as a preventive measure.



707. The charges against Mr. Askarov and another individual are supported by the evidence of six of the police officers who were victims, the official reports of the confrontations between the police and Mr. Askarov, evidence from a witness, and the official reports of his confrontation with Mr. Askarov.

708. According to evidence from the above-mentioned police officers, on 13 July 2010, Mr. Askarov and another individual were in the crowd, encouraging people to refuse to obey the law enforcement agencies, to take hostage the head of the district internal affairs office, and to kill the other police officers.

709. On 24 June 2010, Mr. N. Toktakunov, lawyer for Mr. Askarov, came to the Dzhahalal-Abad provincial procurator's office to submit a complaint concerning the alleged torture of his client. According to a forensic medical report dated 17 June, Mr. Askarov had bruising around his arm and lower back, serious enough to be considered impairment to health but not causing any short-term health disorder.

710. The inquiry conducted as a result of the complaint found that Mr. Askarov was arrested on 16 June 2010 and held in the cell where two other individuals were being detained on suspicion of having participated in the mass disorders. The same day, on the grounds that Mr. Askarov's illegal actions had led to his house being set on fire and many people being killed, one of the individuals hit Mr. Askarov around the head, causing Mr. Askarov to fall on his back on the concrete floor.

711. On 25 June 2010, Mr. Askarov requested the Dzhahalal-Abad procurator's office not to charge said individual as he had no claims against him. Moreover, it was noted in the complaint that none of the police officers had beaten him, and he refused to undergo a forensic medical examination.

712. On 29 June 2010, the provincial procurator's office refused to initiate criminal proceedings against said individual because there had been no complaint from the victim; and in respect of the alleged use of torture, because no crime had been committed.

713. Mr. Askarov's participation in the mass disorders has been proved by materials in the case file. Investigations are now taking place in respect of the criminal case.

714. A second response was received from the Government on 6 October 2010 on the case of Mr. Askarov. However, at the time of finalizing the present report, no translation was available.

#### **Comments and observations of the Special Rapporteur**

715. The Special Rapporteur thanks the Government for the replies to the communication summarized above. She notes the information which specifies the charges brought against Mr. Azimzhan Askarov. She welcomes that a forensic investigation has been conducted following the allegations of ill-treatment of Mr. Askarov. In this regard, the Special Rapporteur calls on the Government to ensure accountability for those responsible for the bruises around Mr. Askarov's arm and lower back which were deemed serious enough to be considered impairment to his health.

716. While noting the information that the provincial procurator's office refused to initiate criminal proceedings against the individual who reportedly beat Mr. Askarov in detention, she however recalls that an investigation should be carried out into all allegations of ill-treatment, even in the absence of an official complaint.

#### **Communication sent**

717. On 15 September 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders sent a letter of allegations to the

Government of the Kyrgyz Republic concerning the assault on **Mr. Abdumannap Khalilov**, human rights defender from Osh and a human rights lawyer who has represented individuals in both penal and civil cases.

718. According to the information received, on 16 August 2010, at the city tribunal in Osh, Mr. Khalilov was beaten by a crowd of women while a group of policemen who were present at the scene reportedly did not intervene.

719. Mr. Khalilov went to the city tribunal to attend a court ruling for a civil case on which he had been working. In the courtyard of the tribunal, a group of women of Kyrgyz ethnic origin were protesting against the appointment of a new judge.

720. According to reports received, one of the women recognized Mr. Khalilov and shouted "He is the defender of Uzbeks". The group of women reportedly attacked him and started to beat him. Mr. Khalilov could not escape and ran to a group of policemen who were present at the scene. However, instead of protecting him, the group of policemen reportedly pushed him towards the women, who continued to assault him.

721. Mr. Khalilov managed to reach the court building and hid in the room of the President of the Tribunal, where the President and two police colonels allegedly were present at the time. The women ran after him, entered the room and continued their assault of Mr. Khalilov. One woman reportedly took a bottle of water and smashed it on Mr. Khalilov's face, after which he lost consciousness.

722. According to the information received, two staff members from the Office of the Prosecutor who knew Mr. Khalilov helped him to leave through a back door and get into a taxi. As a consequence of the assault, Mr. Khalilov reportedly suffered from concussion and his body showed numerous bruises/ hematomas.

723. According to information received, various incidents of violence against human rights defenders and their supporters would have been documented in this region, some of which are reportedly closely related to the Uzbek ethnicity of the victims.

724. Concern is expressed about the physical and psychological integrity of Mr. Khalilov and at the allegations that members of the police were present at the scene and did not protect him effectively.

#### **Communication received**

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

#### **Communication sent**

726. On 25 October 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the situation of staff members of the human rights non-governmental organization **Spravedlivost**, which provides free legal and judicial assistance to both ethnic Kyrgyz and Uzbek people in the aftermath of the violence which erupted in the south of the country in June 2010, and the situation of lawyers working on cases related to these violent incidents.

727. According to the information received, on 12 October 2010, two unidentified men, claiming to be relatives of ethnic Kyrgyz who were allegedly killed during the events in June by ethnic Uzbek, visited the premises of Spravedlivost in Jalal Abad. They harassed the staff members then present by asking for their full names and contact details, and why they were "employing lawyers for killers". They stated that these lawyers, i.e. the lawyers hired for a number of ethnic Uzbek defendants, should remain quiet throughout the trial and

refrain from submitting petitions to the judge. The two men further enquired about the organisation's sources of funding. Finally, they stated that all human rights organizations should be closed in the Kyrgyz Republic, and threatened to return the following day.

728. Serious concern is expressed that the threats against the staff members of Spravedlivost may be related to their legitimate human rights activities, i.e. the legal and judicial assistance they provide to both Kyrgyz and Uzbek people. Further concern is expressed for lawyers working on cases related to the violent incidents of June 2010.

#### **Communication received**

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

#### **Communication sent**

730. On 29 October 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding **Mr. Azimzhan Askarov**, director of Vozdukh, a human rights organization which documents police ill-treatment in detention, and **Mr. Nurbek Toktakunov**, Mr. Askarov's lawyer. Mr. Askarov was the subject of joint urgent appeals sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 22 June 2010 and by the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur 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 torture and other cruel, inhuman or degrading treatment or punishment, on 18 August 2010. Mr. Toktakunov was the subject of a joint allegation letter sent by the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the independence of judges and lawyers, on 12 August 2010.

731. According to the new information received, Mr. Azimzhan Askarov is currently appealing a sentence of life imprisonment imposed by the regional court at Nookan, in the Jalal-Abad region of the Kyrgyz Republic, after a trial allegedly characterised by severe procedural irregularities and allegations of torture and ill-treatment of the accused while in detention. Mr. Askarov and the other defendants, all ethnic Uzbeks, were found guilty of murdering a Kyrgyz policeman during ethnic clashes in Bazar-Korgon in June 2010.

732. The trial was allegedly characterized by worrying irregularities with regard to fair trial procedure. At the opening of the trial hearing on 2 September 2010, family members of the deceased policemen reportedly verbally abused Mr. Askarov and threatened "to kill all the defendants and their children wherever they are". During the hearing, relatives of the victim reportedly prevented Mr. Askarov's relatives from entering the court room. It is also reported that they repeatedly interrupted the proceedings with threats and insults against the defendants, often making reference to the defendants' ethnicity. The judge allegedly did not intervene to maintain order in the court room. The defendants' lawyers were also attacked by relatives of the deceased police officer and injured police officers, who reportedly hit them with sticks, and threw a glass at them, which smashed against the bars of the cage holding the defendants, resulting in splinters of glass hitting one of the lawyers. It is reported that court officials, including the judge, intervened only sporadically to stop the violence and to restore order. Mr. Askarov's lawyers were allegedly denied the opportunity to question witnesses or submit petitions during the hearing. When the lawyers expressed

concern that they would not be able to defend their clients under these conditions, the judge threatened to have their licenses to practice revoked.

733. Before the trial hearing on 6 September 2010 began, family members of the deceased policeman and injured police officers posted flyers on the walls of the court building containing offensive language against Mr. Askarov and co-defendants and calls for the application of death penalty. The hearing itself was characterized by yet further allegations of procedural irregularities. A request by Mr. Askarov's lawyer, Mr. Nurbek Toktakunov, that the hearing be deferred to allow him time to prepare an adequate defence was also denied; Mr. Toktakunov was also reportedly denied permission to meet with his client, and informed that he could only meet Mr. Askarov at the end of the trial process. Members of the audience, including family members of the deceased policeman, attempted to violently attack the defendants, and frequently subjected both the defendants and Mr. Toktakunov to verbal abuse; racist remarks; and threats. It is reported that no witnesses for the defence were heard during the trial, and that when Mr. Toktakunov stated his intention to call a witness, he was told by the victim's relatives that the witness would "not leave this place alive". Further, members of the audience also reportedly directed questions to the defendants without authorisation from the judge, and the accused did not receive a full explanation of their rights and responsibilities. It is also alleged that Mr. Askarov's relatives were subjected to intimidation and threatened not to attend the hearing.

734. Serious concerns have been raised regarding the treatment of Mr. Askarov and the other defendants while in detention. At the trial hearing of 6 September 2010, four of the defendants, including Mr. Askarov, allegedly bore visible marks indicating that they had been subjected to beatings. A petition by Mr. Toktakunov that his client be given a thorough medical exam was denied. When questioned by the judge, Mr. Askarov denied that he was subjected to any harm, although concern is expressed that this may have been out of fear of retribution.

735. On 15 September 2010, Mr. Askarov and all seven defendants were found guilty and sentenced to life imprisonment. The verdict in the trial was subsequently denounced by Kyrgyz Ombudsman, Mr. Tursunbek Akun, as being politically motivated. Mr. Akun also claimed that an alternative investigation into the policeman's killing held by his office had found Mr. Askarov not guilty.

736. On 25 October 2010, Mr. Askarov appeared before Tashkumyr city court in order to appeal against the sentence. It is reported that upon arriving at the court, witnesses for the defence were prevented from entering the court room by a group of individuals. Upon raising the issue with the judge, the defence lawyer was questioned as to why the defence team had not previously applied for protection for their witnesses. During the session, several defendants reportedly claimed that they had been subjected to torture during interrogation; however, the court reportedly failed to respond to the allegations. The next hearing in the appeal is scheduled for 3 November 2010.

737. Concern was expressed that the conviction and sentencing of Mr. Azimzhan Askarov may be related to his legitimate and peaceful work in defence of human rights in Kyrgyzstan. Grave concern was also expressed for the physical and psychological integrity of Mr. Askarov and his family, Mr. Toktakunov, and witnesses for the defence in this case, in light of the repeated allegations of torture and ill-treatment, attacks, harassment, and intimidation outlined above. Further concern was expressed regarding the aforementioned allegations of irregularities relating to due process during Mr. Askarov's trial and appeal.

#### **Communications received**

738. In a letter dated 16 December 2010, the Government responded to the communication dated 20 October 2010 by providing the same reply as the one sent to the

communication sent on 12 August 2010 in respect of the case of Mr. Toktakunov (see above).

739. In the same letter, the Government responded to the communication in respect of the case of Mr. Askarov. Part of the information provided is already contained in the response dated 21 August 2010.

740. At approximately 10 p.m. on 12 June 2010, about 400 to 500 ethnic Uzbeks assembled at the intersection of Saidullaev and Jalal-Abad streets in the village of Bazar-Korgon in the Bazar-Korgon district of Jalal-Abad province and 400 to 500 ethnic Kyrgyz at the intersection of Jalal-Abad and Abduraimov streets in the same village.

741. Subsequently, at approximately 8 a.m. on 13 June 2010, about 400 to 500 ethnic Uzbeks armed with firearms, steel rods, wooden sticks and knives assembled at the Bazar-Korgon bridge on the Osh-Bishkek highway, blocked the highway and organized mass disturbances in connection with the inter-ethnic clashes in Osh.

742. A special investigating team from the Bazar-Korgon district internal affairs office was dispatched to the scene of the incident. The militia officers' attempts to quell the criminal actions of those organizing and participating in the mass disturbances were met with resistance and disobedience; neighbourhood militia officer Captain M. Sulaimanov was seized, then stabbed repeatedly, which resulted in his death.

743. On 13 June 2010, the Bazar-Korgon district procurator's office opened criminal case No. 166-10-159 in connection with the above-mentioned mass disturbances and murder of a law enforcement officer.

744. As a result of the investigation, charges were brought against A. Askarov, the head of the human rights organization Vozdukh, for offences under articles 28, 30-227, paragraphs 2 (1) and 2 (3), 241, paragraph 1, 299, paragraphs 1 and 2 (1), 233, paragraphs 1, 2 and 3, 30-97, paragraphs 2 (3), 2 (4), 2 (5), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), 30-97, paragraphs 2 (1), 2 (4), 2 (5), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), 28, and 30-340 of the Criminal Code; against S. Mirzalimov under articles 233, paragraphs 1, 2 and 3, 299, paragraph 2 (3); against M. Mamadilieva under articles 299, paragraph 2 (1), and 233, paragraphs 1, 2 and 3; against E. Rasulov under articles 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), and 340; against M. Kochkarov under articles 97, paragraphs 2 (3), (4), (6), (9), (10), (13), (14) and (15), 233, paragraph 2, and 340; and against S. Mulavhunov under articles 242, paragraph 3, and 30-233, paragraph 2.

745. Criminal case No. 166-10-159 was referred to court for trial on 11 August 2010.

746. The Jalal-Abad provincial procurator's office completed its investigation of criminal case No. 166-10-626, filed against I. Abduraimov separately from case No. 166-10-159 in connection with the ethnically motivated mass disturbances in the village of Bazar-Korgon in the Bazar-Korgon district on 13 June 2010 and also referred to the Bazar-Korgon district court for trial, on 26 August 2010.

747. The Bazar-Korgon district court ruled that the two criminal cases should be joined on 27 August 2010.

748. The assize court hearing of the criminal case against A. Askarov and the others, presided over by Bazar-Korgon district court judge N.K. Alimkulov, began at 11 a.m. on 2 September 2010 in the Nookan district court.

749. On 15 September 2010, the Bazar-Korgon district court found the defendant Azimzhan Askarov guilty of offences under articles 28, 30 and 277, paragraphs 2 (1) and 2 (3), of the Criminal Code and sentenced him to 9 years of deprivation of liberty, and, under article 241, paragraph 1, to 1 year of deprivation of liberty. He was acquitted of an offence under article 299, paragraph 1, but was sentenced to 5 years of deprivation of liberty under

article 299, paragraph 2 (1), 9 years under article 233, paragraph 1, 4 years under article 233, paragraph 2, 3 years under article 233, paragraph 3, and life imprisonment, with confiscation of property, under articles 30 and 340 of the Code.

750. In accordance with article 59 of the Code, Mr. Askarov was handed a final sentence of life imprisonment for all offences committed, to be served in a special regime colony, with confiscation of property.

751. The charges under the following articles of the Code were dropped: 30-97, paragraphs 2 (3), 2 (4), 2 (5), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), 30-97, paragraphs 2 (1), 2 (4), 2 (5), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), 28 and 233, paragraphs 1, 2 and 3.

752. The defendant Shukurjan Saidkulovich Mirzalimov was found guilty of offences under article 299, paragraph 2 (1), of the Code and sentenced to 5 years of deprivation of liberty, and, under article 233, paragraph 1, to 9 years of deprivation of liberty, under article 233, paragraph 2, to 4 years and, under article 233, paragraph 3, to 2 years.

753. In accordance with article 59 of the Code, Mr. Mirzalimov was handed a final sentence of 20 years of deprivation of liberty for all offences committed, to be served in a strengthened regime penal colony.

754. Charges under article 233, paragraphs 1, 2 and 3, were dropped.

755. The defendant Minyura Tirkashevna Mamadalieva was found guilty of offences and sentenced as follows: under article 299, paragraph 2 (1), of the Code, to 5 years of deprivation of liberty, under article 233, paragraph 1, to 9 years, under article 233, paragraph 2, to 4 years and, under article 233, paragraph 3, to 2 years.

756. In accordance with article 59 of the Code, Ms. Mamadalieva was handed a final sentence of 20 years of deprivation of liberty for all offences committed, to be served in a colony for women.

757. The defendant Sanzharbek Zhamaldinovich Mulavhunov was found guilty of offences under article 242, paragraph 3, of the Code and sentenced to 1 year of deprivation of liberty and, under article 30-233, paragraph 2, to 8 years.

758. In accordance with article 59 of the Code, Mr. Mulavhunov was handed a final sentence of 9 years of deprivation of liberty for all offences committed, to be served in a strengthened regime penal colony.

759. The defendant Muhamadzakir Mamashakirovich Kochkarov was found guilty of offences under article 233, paragraph 2, of the Code and sentenced to 8 years of deprivation of liberty, and to life imprisonment, with confiscation of property, under article 340 of the Code.

760. In accordance with article 59 of the Code, the final sentence handed to Mr. Kochkarov for all offences committed was life imprisonment in a special regime colony, with confiscation of property.

761. The charges under article 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), of the Code were dropped.

762. The defendant Elmurad Muminzhanovich Rasulov was found guilty of offences under article 233, paragraph 2, and sentenced to 8 years of deprivation of liberty and, under article 340, to life imprisonment, with confiscation of property.

763. In accordance with article 59 of the Code, Mr. Rasulov was handed a final sentence of life imprisonment, to be served in a special regime penal colony, with confiscation of property, for all offences committed. Taking into account an unserved sentence for a prior

conviction, he was handed a final sentence, under article 60 of the Code, of life imprisonment in a special regime penal colony, with confiscation of property.

764. The charges under article 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), of the Code were dropped.

765. The defendant Dilshodbek Tohtasinovich Rozubaev was found guilty of offences under article 233, paragraph 2, of the Code and sentenced to 8 years of deprivation of liberty and, under article 340, to life imprisonment, with confiscation of property.

766. In accordance with article 59 of the Code, he was handed a final sentence of life imprisonment in a special regime penal colony, with confiscation of property.

767. The charges under article 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), of the Code were dropped.

768. The defendant Isroilbek Magomatshakirovich Abduraimov was found guilty of offences under article 233, paragraph 2, of the Code and sentenced to 8 years of deprivation of liberty and, under article 340, to life imprisonment, with confiscation of property. In accordance with article 59 of the Code, he was handed a final sentence of life imprisonment in a special regime penal colony, with confiscation of property.

769. The charges under article 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), of the Code were dropped.

770. The legal representatives of the victim, C. Bechelova and K. Sulaimanova, the defendants Mr. Rosbaev and Mr. Mulavhunov and the defence lawyers B. Kalmanov, A. Abylakimov, G. Shaimkulova, M. Akmatova, Ms. Usmanova, T. Tomina and A. Maytov appealed the district court judgement to the Jalal-Abad provincial court.

771. The criminal and administrative chamber of the Jalal-Abad provincial court, by a judgement of 10 November 2010, upheld the 15 September 2010 judgement of the Bazar-Korgon district court against Mr. Askarov, Mr. Mirzalimov, Ms. Mamadalieva, Mr. Mulavhunov, Mr. Kochkarov, Mr. Rasulov, Mr. Abduraimov and Mr. Rozubaev, and the defence lawyers' appeals were denied.

772. Relatives of the defendants Mr. Askarov, Mr. Rasulov, Mr. Kochkarov, Mr. Mulavhunov, Mr. Mirzalimov, Mr. Abduraimov and Mr. Rozubaev on 5 November 2010 applied to the Jalal-Abad provincial procurator's office for measures to be taken against Jalal-Abad province special militia officers for causing the defendants bodily harm following legal proceedings at the Nookan district court on 4 November 2010.

773. A review of the matter established that, on 4 November 2010, in the Nookan district court, the Jalal-Abad provincial court heard the appeal in the case of the murder of the Bazar-Korgon district militia officer M. Sulaimanov.

774. The Jalal-Abad province internal affairs department chief mobilized 10 rapid response unit officers and 30 Jalal-Abad province patrol guard officers to keep the peace during the proceedings and ensure the safety of the parties.

775. Deputy militia chief T. Torokanov and the head of the public security section of the Jalal-Abad province internal affairs department, I. Shatmanaliev, conducted an official inquiry into the alleged assault on the defendants by special militia officers following the proceedings and found no evidence to corroborate the allegation. In addition, forensic medical examinations found no sign of bodily harm of any kind caused to the defendants.

776. Under these circumstances, the review concluded that there was no evidence of any wrongdoing in the actions of the rapid response unit officers.

777. In this connection, on 18 November 2010 the Jalal-Abad provincial procurator's office decided against instituting criminal proceedings on the basis of the application by the relatives of Mr. Askarov, Mr. Rasulov, Mr. Kochkarov, Mr. Mulavhunov, Mr. Mirzalimov, Mr. Abduraimov and Mr. Rozubaev and explained to them the procedures for appealing that decision.

778. N. Toktakunov, Mr. Askarov's lawyer, filed a complaint with the Jalal-Abad provincial procurator's office on 24 June 2010 alleging that Mr. Askarov had been tortured. A forensic medical examination scheduled on 17 June 2010 established that Mr. Askarov had bruises around his arms and lower back, which were categorized according to their severity as having no short-term health effects.

779. As a result of the review carried out of this complaint, it was established that on 16 June 2010 Mr. Askarov had been detained and placed in an administrative detention cell, where Mr. Mahmujanov and Mr. Mirzalimov were being held on suspicion of involvement in mass disturbances. On the same day, Mr. Mahmujanov, on the pretext that his house had been set on fire and many persons killed because of Mr. Askarov's unlawful acts, struck Mr. Askarov's head with his hand, causing him to fall on his back against the concrete floor.

780. On 25 June 2010, Mr. Askarov appealed to the Jalal-Abad provincial procurator's office not to press criminal charges against Mr. Mahmujanov, as he had no claims against him. Furthermore, his statement indicated that no militia officer had beaten him, and he refused to undergo a forensic medical examination.

781. On 29 June 2010, the provincial procurator's office declined to initiate criminal proceedings against Mr. Mahmujanov because no complaint had been filed by the victim. Nor were any criminal proceedings instituted in respect of the alleged torture, owing to lack of evidence of an offence.

#### **Comments and observations of the Special Rapporteur**

782. As the first part of the response contains the same information as the one provided by the Government to the previous communication sent on 12 August 2010, the Special Rapporteur wishes to refer to her comments and observations formulated above.

783. With regard to the case of Mr. Askarov, the Special Rapporteur thanks the Government for its response. The Special Rapporteur would appreciate receiving updated and detailed information on any further complaints and appeals procedures in relation to the case of Mr. Askarov. She continues to be concerned at the serious nature of the allegations, in particular when taking into account the fact that Mr. Askarov has been the subject of two previous urgent appeals.

#### **Translations of responses to communications sent during the reporting period covered in last year's report** (for ease of reference the communications sent are also reproduced below)

##### **Communication sent**

694. On 11 December 2009, the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the ill-treatment of detainees following the events which took place in Nookat on 1 October 2008.

695. According to the information received, on 1 October 2008, the population of Nookat planned to hold an event dedicated to the Orozo Ait religious feast (Yid al Fitr) in the Central Park, which is an official holiday in Kyrgyzstan. On 27 September, the celebration



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

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

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

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

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

700. That same evening, an investigator named Talant called her to the investigation room. He asked her to kiss him, and when she refused, he started to harass her. During the trial, Ms. Adbikarimova stated to the court that she had been subjected to sexual violence, but her statements were ignored. The next day, the authorities put a gas mask on her head and let cigarette smoke into the hose. They then threatened to put her on an electric chair and beat her on her feet. The following day, her head was shaven and she was forced to stand for many hours. After that, she was placed in a cell with chlorinated water.

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

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

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

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

#### **Communication received**

784. In a letter dated 13 January 2010, the Government replied to the communication dated 11 December 2009 as follows.

*(Translated from Russian)*

785. Information from the Ministry of Internal Affairs of Kyrgyzstan

786. On 1 October 2008, because of mass disturbances in the town of Nookat, the interdepartmental investigation group (the Procurator’s Office and the Osh province Department of Internal Affairs of the State Committee for National Security) brought case No. 140-08-178 under article 233, paragraphs 1, 2 and 3 (Organization of mass disturbances), and article 174, paragraph 2 (Malicious destruction or damage to property), of the Criminal Code.

787. Investigative measures by staff of the Internal Affairs Office and the State Committee for National Security led to the arrest and detention of 32 people who had participated in the mass disturbances.

788. On 10 October 2008, as a preventive measure, the 32 detainees were remanded in custody as suspects by the judicial authorities, and held in temporary holding facilities of the Osh province State Committee for National Security and Internal Affairs Office. Proceedings were brought in the preliminary inquiry against 9 organizers and 23 people who had participated actively in the mass disturbances.

789. On 2 November 2008, the interdepartmental investigation group brought final charges against those who had participated in the mass disturbances of having committed crimes under article 299, paragraph 2 (1) and (3) (Incitement to ethnic, racial, religious or interregional hatred), article 233, paragraphs 1, 2 and 3 (Mass disturbances), article 174, paragraph 2 (Malicious destruction or damage to property), article 341, paragraph 2 (Use of violence against representatives of the authorities), article 259, paragraph 2 (Organization of an association that infringes on the identity and rights of others), article 259, paragraph 1 (Organization of an association that infringes on the identity and rights of others), and article 299, paragraph 2 (3) (Incitement to ethnic, racial, religious or interregional hatred), of the Criminal Code.

790. On 10 November 2008, after confirmation from the Procurator's Office of the decision to prosecute, the case was referred to court for trial.

791. On 16 November 2008, the Nookat district court sentenced the accused to prolonged periods of deprivation of liberty.

792. On 19 May 2009, under the supervisory procedure, the criminal division of the Supreme Court amended the judgements of the courts of first and second instance, excluding the article on malicious destruction or damage to property. Thirteen of the 32 accused were acquitted, for lack of evidence, under the article on inducement of a minor to commit a crime.

793. The penalties imposed on the minors S. N., who was sentenced to 10 years' deprivation of liberty, and A. E., who was sentenced to 9 years' deprivation of liberty, were reduced to 5 years' deprivation of liberty each.

794. The sentence imposed on V. Mashrapov was reduced from 20 to 6 years. The sentences of the women convicted, L. Saidaripova and Z. Abdikarimova, were reduced to seven years' deprivation of liberty each.

795. Information from the Supreme Court on the sentences passed in the Nookat case

796. On 27 November 2008, Nookat district court sentenced I.U. Zokirov, A.A. Mashrapov, R.A. Erdoshov and others for crimes under article 156, paragraph 4; article 233, paragraphs 1, 2 and 3; article 174, paragraph 2 (2); article 341, paragraph 2; article 259, paragraph 2; article 295-1; article 297, paragraph 1; and article 299, paragraph 2 (3), of the Criminal Code.

797. Using partial cumulative sentencing based on article 59 of the Criminal Code, the final sentences under the articles mentioned ranged between 9 and 20 years' deprivation of liberty, to be served in correctional institutions.

798. The period of imprisonment is counted from the time of actual arrest.

799. Under article 61 of the Criminal Code, the period spent in remand is considered as part of the period of imprisonment, with one day in remand counted as the equivalent of two days' imprisonment.

800. The convicted persons and their lawyers appealed against the sentences handed down by the court of first instance.

801. By a decision of the Osh provincial court criminal and administrative offences division on 17 January 2009, the above-mentioned custodial sentence passed by Nookat

district court on 27 November 2008 was partially amended in respect of S.M. Nuraliyev. The remaining part of the sentence was unchanged.

802. By a decision of the Osh provincial court criminal and administrative offences division of 19 February 2009, the above-mentioned custodial sentence passed by Nookat district court on 27 November 2008 in respect of L.I. Isakov and K.I. Isakov was unchanged.

803. The court of supervisory instance considered the complaint lodged under the supervisory procedure by the convicted persons and their lawyers.

804. By a decision of the Osh provincial court criminal and administrative offences division of 19 May 2009, the sentences passed by the courts of first and second instance on I.U. Zokirov, A.A. Mashrapov, V.A. Mashrapov, R.A. Erdoshev, M.A. Atatayev, N.A. Erdoshev, B.M. Maksytov, L.A. Saidaripova, I.L. Orozbayev, A.A. Mashrapov, A.T. Asanov, S.L. Alimzhanov, A.A. Iskandarov, A.E. Aitiyev, N.L. Alimzhanov, Z.K. Abdikarimova, M.A. Atatayev, K.K. Ergashov, A.S. Karatayev, M.S. Isakov, A.I. Isakov, K.I. Isakov, A.A. Ergashev, K.A. Ergashev, M.S. Teshebayev, D.R. Kholmatov, R.G. Zhurayev, M.B. Khashimov, I.A. Saidoripov, O.A. Bekbayev, S.M. Nuraliyev and M.M. Kholmurzayev were amended, with article 174, paragraph 2 (2), excluded from the charge (sentence).

805. I.U. Zokirov, M.A. Atatayev, A.A. Mashrapov, S.L. Alimzhanov, A.A. Iskandarov, Z.K. Abdikarimova, K.K. Ergashov, A.I. Isakov, K.A. Ergashev, R.G. Zhurayev, I.A. Saidaripov, O.A. Bekbayev and M.S. Isakov were acquitted under article 156, paragraph 4, because of lack of evidence, and their sentences were amended accordingly.

806. The minors S.M. N. and A.A. E. convicted under article 56 of the Criminal Code were each finally sentenced to deprivation of liberty for a period of five years.

807. L.A. Saidaripova and Z.K. Abdikarimova, charged under article 56 of the Criminal Code, were each finally sentenced to deprivation of liberty for a period of seven years, and V.A. Mashrapov was sentenced under the same article to a period of six years' deprivation of liberty.

808. The sentences of the remaining convicted persons were reduced.

809. The convicted persons were jointly ordered to pay a penalty of 150,000 soms to the Nookat district administration, and 100,000 soms to the Osh province Internal Affairs Department.

810. The remainder of the sentences remained valid.

811. Judgement passed by the Osh district court (on 16 January 2009)

1. Khaidarali Alibaevich Ergeshov, born 1973: 17 years' deprivation of liberty;
2. Rakhmonberdi Gulomovich Dzhuraev, born 1961: 16 years' deprivation of liberty;
3. Neimatilla Akhmatovich Erdoshev, born 1966: 12 years' deprivation of liberty;
4. Labarkhan Abdiganievna Saidaripova, born 1971: 15 years' deprivation of liberty;
5. Alisher Abdisalamovich Iskenderov, born 1982, on the Internal Affairs Department ninth group list as a member of the Hizb ut Tahrir religious extremist movement and organizer of the mass disturbances: 15 years' deprivation of liberty;

6. Adakhamzhan Isakov, born 1951, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, and active participant in the mass disturbances: 16 years' deprivation of liberty;
7. Ilkhomzhon Usmonzhonovich Zakirov, born 1982, member of Hizb ut Tahrir, not on the list, active participant in the mass disturbances: 17 years' deprivation of liberty;
8. Rakhmatilla Akhmatovich Erdoshev, born 1961, active participant in the mass disturbances: 12 years' deprivation of liberty;
9. Dilmukhammad Rozimamatovich Kholmatov, born 1981, active participant in the mass disturbances: 16 years' deprivation of liberty;
10. Abdulvakhab Arapbayevich Mashrapov, born 1967, active participant in the mass disturbances: 15 years' deprivation of liberty;
11. Vakhidillo Abdulvakhobovich Mashrapov, born 1990, active participant in the mass disturbances: 20 years' deprivation of liberty;
12. Akhmadillo Akbaraliyevich Ergashev, born 1992, active participant in the mass disturbances: 9 years' deprivation of liberty;
13. Kholdorzhon Ibragimzhanovich Isakov, born 1969, previously tried under article 299 of the Criminal Code, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 14 years' deprivation of liberty;
14. Borubai Momunovich Maksytov, born 1976, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 13 years' deprivation of liberty;
15. Manas Sabirovich Isakov, born 1972, previously tried under article 299 of the Criminal Code, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, organizer and active participant in the mass disturbances: 16 years' deprivation of liberty;
16. Ilgorzhon Adilovich Saidoripov, born 1974, active participant in the mass disturbances: 12 years' deprivation of liberty;
17. Makhammadsoli Askarovich Atatayev, born 1969, active participant in the mass disturbances: 13 years' deprivation of liberty;
18. Abdirakhimzhan Abdipattalovich Mashrapov, born 1960, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 14 years' deprivation of liberty;
19. Ismailzhan Lukmanzhanovich Orozbayev, born 1986, active participant in the mass disturbances: 15 years' deprivation of liberty;
20. Muzaffar Shakirzhanovich Teshebayev, born 1981, active participant in the mass disturbances: 15 years' deprivation of liberty;
21. Shakhobidin Lutfillayevich Alimzhanov, born 1958, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 27 years' deprivation of liberty;
22. Almazbek Tashtanovich Asanov, born 1971, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 14 years' deprivation of liberty;
23. Ozgonbai Abdimalipovich Bekbayev, born 1981, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 16 years' deprivation of liberty;

24. Mamadumar Bazarbayevich Khashimov, born 1958, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 13 years' deprivation of liberty;
25. Zarina Karatayevna Abdikarimova, born 1973, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 16 years' deprivation of liberty;
26. Nizamidin Lutfullayevich Alimzhonov, born 1974, active participant in the mass disturbances: 20 years' deprivation of liberty;
27. Abdusaid Ergeshovich Aitiyev, born 1984, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 12 years' deprivation of liberty;
28. Sardor Mukhudinovich Nuraliyev, born 1990, active participant in the mass disturbances: 18 years' deprivation of liberty;
29. Mansurzhan Makhamadaliyevich Khalmurzayev, born 1982, active participant in the mass disturbances: 13 years' deprivation of liberty;
30. Makhamatyakub Askarovich Atatayev, born 1972, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 16 years' deprivation of liberty;
31. Abdulla Saipidinovich Karatayev, born 1976, active participant in the mass disturbances: 15 years' deprivation of liberty;
32. Khalmakhamad Khamidovich Ergashev, born 1973, on the Internal Affairs Department ninth group list as a member of Hizb ut Tahrir, active participant in the mass disturbances: 17 years' deprivation of liberty.

**Comments and observations of the Special Rapporteur**

812. The Special Rapporteur thanks the Government for the reponse to the communication dated 11 December 2009. However, she remains concerned at the serious and multiple allegations of torture, including of minors and women, brought to her attention and regrets the absence of information regarding any investigations and/or prosecutions which have been carried out in relation to these cases. She urges the Government to provide substantive information in this respect at the earliest possible date, as requested in the communication, and on the measures taken to ensure that no confession is obtained under torture and used in criminal proceedings.

**Concluding comments and observations of the Special Rapporteur:**

813. The Special Rapporteur thanks the Government for its replies to the communications dated 20 July, 12 August, 18 August and 29 October 2010. However, she regrets the absence of a response to the communications dated 15 September and 25 October 2010. She calls on the Government of the Kyrgyz Republic to provide a response to the outstanding communications and to all the issues raised therein.

814. She expresses concern about the allegations concerning acts of intimidation of lawyers, including lawsuits initiated against them which prevent them from performing their duties freely and without fear. She wishes to underscore the importance of ensuring that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and that they shall not be threatened with prosecution. In this respect, she calls upon the Government to take into account the Basic Principles of the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations

Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, to ensure their protection and proper role in the administration of justice.

815. Furthermore, she expresses concern at numerous allegations of ill-treatment and wishes to remind the Kyrgyz Republic that as a State party to the Convention against torture and other cruel, inhuman or degrading treatment or punishment, the Government has the obligation to proceed to a prompt and impartial investigation into allegations of torture in accordance of article 12 of the Convention.

## Maldives

### Communication sent

816. On 30 July 2010, the Special Rapporteur sent an urgent action regarding the **criteria that has been developed by the Judicial Services Commission for the re-appointment of sitting judges in accordance with Article 285(b) of the Constitution.**

817. The Special Rapporteur is informed that under Article 285(b) of the Constitution the Judicial Services Commission (JSC) is mandated to determine whether all sitting judges appointed prior to the adoption of the 2008 Constitution on 7 August 2008, (with the exception of the Chief Justice), possess the necessary qualifications/characteristics specified in Article 149 of the Constitution. The relevant section stipulates that: (a) All Judges in office at the commencement of this Constitution except for the Chief Justice shall continue in office until such time as a determination pursuant to this Article. (b) The Judicial Service Commission established pursuant to Article 157 of this Constitution, shall within two years of the commencement of this Constitution determine whether or not the Judges in office at the said time, possess the qualification of Judges specified in Article 149. (c) Where it is determined as provided in article (b) that a Judge does not possess a qualification or the qualifications specified in Article 149, such Judge shall cease to hold office. (d) Where it is determined as provided in article (b) that a Judge possesses the qualifications specified in Article 149, such Judge shall be appointed as a Judge under this Constitution. (e) Except as provided in article (c), Judges may only be removed from office as specified in Article 154 of this Constitution.

818. Article 149 which provides for the qualifications of judges stipulates that: (a) A person appointed as a Judge in accordance with law, must possess the educational qualifications, experience and recognized competence necessary to discharge the duties and responsibilities of a Judge, and must be of high moral character.(b) In addition to the qualifications specified in article (a), a Judge shall possess the following qualifications: (i) be a Muslim and a follower of a Sunni school of Islam (ii) be twenty-five years of age (iii) has not been convicted of an offence for which a haad is prescribed in Islam, criminal breach of trust, or bribery (iv) be of sound mind.

819. The Special Rapporteur is informed that pursuant to Article 285(b) the JSC has developed the criteria to evaluate the competence of sitting judges for re-appointment based on the provisions of article 149; notably they have indicated (a) on educational qualification - that any certificate a sitting judge possess, even if not accredited by the Maldives Accreditation Board, is sufficient, (b) on experience and competence- that the fact that one is a sitting judge automatically means that s/he has gained the necessary experience and competence, and (c) on removal from office- "high moral character" shall be interpreted to mean not having been found guilty in a Court of Law of any of the crimes specified in Article 149(b) (iii). Where a sitting judge has been found guilty in a Court of Law of a crime other than those specified in Article 149(b) (iii), these cases would be decided individually case by case by the JSC. The JSC has now begun reappointing judges under these criteria.

### **Communication received**

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

### **Comments and observations of the Special Rapporteur**

821. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to her communication dated 30 July 2010. The Special Rapporteur considers response to her communications an important part of the cooperation between governments and her mandate and as such, requests that the Government of Maldives provide details about the issues raised in the aforementioned communication at its earliest convenience.

## **Mauritania**

### **Communication envoyée**

822. Le 29 décembre 2010, la Rapporteuse spéciale, conjointement avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire ; le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants ; la Rapporteuse spéciale sur l'indépendance des juges et des avocats ; la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme ; et la Rapporteuse spéciale sur les formes contemporaines d'esclavage sur la situation de M. **Biram Ould Dah Ould Abeid**, président de l'Initiative pour la Résurgence du Mouvement Abolitionniste en Mauritanie (IRA Mauritanie), une organisation qui lutte pour l'éradication de l'esclavage, et chargé de mission auprès de SOS-Esclaves, ainsi que la situation de M. **Dah ould Boushab**, M. **Mouloud ould Boubi**, M. **Ali ould Boubarak Fall**, M. **Sheikh ould Abidin ould Salem** et M. **Bala Touré**, membres de IRA Mauritanie.

823. M. Ould Dah Ould Abeid a fait l'objet d'une lettre d'allégation envoyée par la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, la Rapporteuse spéciale sur les formes contemporaines d'esclavage et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression le 22 février 2010. Le 27 avril 2010, un appel urgent a été envoyé par les mêmes détenteurs de mandat sur la situation de M. Ould Dah Ould Abeid.

824. Selon les nouvelles informations reçues, M. Ould Dah Ould Abeid aurait signalé au préfet de la commune d'Arafat, dans la proche banlieue de Nouakchott, le cas de deux filles mineures prétendument contraintes à travailler dans une famille comme domestiques. Il aurait, en date du 13 décembre 2010, demandé à la police d'aller chercher en sa compagnie les deux filles et leur « maîtresse » pour les conduire au commissariat d'Arafat 1. Une fois arrivés au commissariat, le commissaire aurait fait entrer les deux filles et leur « maîtresse » dans son bureau tout en interdisant l'accès à M. Ould Dah Ould Abeid. Ce dernier aurait protesté en argumentant que les filles étaient mineures et qu'il souhaitait donc assister à l'audition. Une vive altercation entre M. Ould Dah Ould Abeid et le commissaire s'en serait suivie. M. Ould Dah Ould Abeid aurait alors été mis à la porte du commissariat et frappé à coups de matraques par plusieurs policiers. Blessé à la tête et à la jambe, M. Ould Dah Ould Abeid aurait ensuite été conduit à l'hôpital. Une trentaine de sympathisants de l'IRA Mauritanie, qui s'était rassemblée devant le commissariat de police en soutien à l'action de dénonciation de M. Ould Dah Ould Abeid, aurait également été dispersée à coups de grenades lacrymogènes.

825. A sa sortie d'hôpital, M. Ould Dah Ould Abeid aurait été placé en garde à vue au commissariat d'Arafat 1, avec une dizaine d'autres sympathisants de l'IRA Mauritanie. Ni la famille de M. Ould Dah Ould Abeid ni son avocat n'auraient été autorisés à lui rendre



visite. M. Ould Dah Ould Abeid devrait être sous peu déféré devant le Procureur de la République.

826. M. Dah ould Boushab, M. Mouloud ould Boubi, M. Ali ould Boubarak Fall, M. Sheikh ould Abidin ould Salem et M. Bala Touré, tous collègues de M. Ould Dah Ould Abeid appartenant à l'IRA Mauritanie, auraient également été arrêtés. Trois chefs d'inculpation seraient retenus à leur encontre, à savoir appartenance à une organisation non-autorisée, coups et blessures et attroupement illicite.

827. M. Ould Dah Ould Abeid, M. Dah ould Boushab, M. Mouloud ould Boubi, M. Ali ould Boubarak Fall, M. Sheikh ould Abidin ould Salem et M. Bala Touré seraient toujours détenus à la prison civile de Nouakchott. M. Ould Dah Ould Abeid aurait finalement eu accès à son avocat le 23 décembre 2010. Une audience serait prévue le 29 décembre 2010.

828. Des craintes sont exprimées quant au fait que l'agression et le placement en garde à vue de M. Ould Dah Ould Abeid, M. Dah ould Boushab, M. Mouloud ould Boubi, M. Ali ould Boubarak Fall, M. Sheikh ould Abidin ould Salem et M. Bala Touré ne semblent viser qu'à sanctionner leurs activités en faveur des droits de l'homme en Mauritanie.

### **Communication reçue**

829. Dans une lettre datée du 10 février 2011, le Gouvernement a répondu aux questions soulevées dans la communication qui lui a été adressée le 29 décembre 2010.

830. Question 1 : Les faits tels que relatés dans le résumé de la correspondance adressée au gouvernement sont-ils exacts ?

831. Réponse 1 : Les faits exacts qui ont déclenché l'affaire sont les suivants : a) Mr. Ould Dah Ould Abeid et ses compagnons ont signalé au Préfet de l'arrondissement d'Arafat le cas de deux filles mineures prétendument contraintes à travailler comme domestiques, ce que la loi de 2007 confère d'ailleurs aux organisations de défense des Droits de l'Homme c'est-à-dire la possibilité d'informer les autorités des cas d'esclavage. Le préfet ordonna à la Police comme le veut aussi cette même loi, d'accompagner Ould Dah et ses compagnons au domicile où se trouvent les deux filles. Celles-ci ont été ramenées au Commissariat, de même que la femme, Oumelminine Mint Bakar Vall chez qui résidaient les jeunes filles.

832. b) Au moment de l'audition des intéressées par la Police, Birame Ould Dah a fustigé l'action de la Police et a voulu participer à cette audition, chose que la loi ne confère pas. Suite à cela, M. Birame et ses compagnons ont agressé les Policiers présents au Commissariat et il s'en est suivi une vive altercation qui a abouti à une blessure de plusieurs éléments de la Police et de M. Birame lui-même.

833. c) M. Birame a été soigné de sa blessure et placé en garde à vue ainsi que certains de ses compagnons comme le veut la loi. Une fois l'affaire devant le Parquet, le Procureur de la République ordonna à la Gendarmerie de mener une enquête sur cette affaire à laquelle une force publique est partie prenante.

834. d) L'enquête conclut au fait que M. Birame et ses compagnons sont coupables d'agression, de coups et blessures sur des éléments de la Police, de tentative de trouble à l'ordre public et d'exercice dans le cadre d'une organisation non reconnue.

835. Question 2 : Veuillez indiquer la base légale ayant prévalu à l'usage de la force contre M. Ould Dah Ould Abeid, son arrestation et son placement en détention, ainsi que l'arrestation et le placement en détention de M. Dah ould Boushab, M. Mouloud ould Boubi, M. Ali ould Boubarak Fall, M. Cheikh Ould Abidin Ould Salem et M. Balla Touré.

836. Réponse 2 : Il n'y a pas eu usage de la force contre M. Ould Dah Ould Abeid et ses compagnons car ce sont eux qui ont utilisé la violence contre les éléments de la Police et les ont blessés. Quant à leur détention, elle s'est déroulée conformément aux procédures en

rigueur et en application du Code de Procédure Pénale, notamment en respect des délais de la garde à vue.

837. Question 3 : Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs de la violence.

838. Réponse 3 : Puisque les allégations sont fausses, aucune poursuite ne peut alors être engagée contre quiconque pour violence. C'est le Commissaire de Police de Arafat qui a porté plainte contre M. Birame et ses Compagnons pour agression de policiers en exercice dans un Commissariat de Police.

839. Question 4 : Veuillez fournir la base légale de la détention de M. Ould Dah et de ses compagnons.

840. Réponse 4 : M. Birame et ses compagnons ont été jugés et condamnés le 6 janvier 2010 par la chambre correctionnelle du tribunal de la Wilaya de Nouakchott. Le jugement rendu a retenu contre M. Birame, M. Dah Ould Boushab, M. Mouloud Ould Biyé, M. Ali Ould M'barek Fall, M. Cheikh Ould Abidine Ould Salem et M. Balla Touré les charges suivantes : (1) attroupement portant atteinte à la sécurité publique ; (2) utilisation de la violence, coups et blessures volontaires contre un Officier de la Police et Agents de la Police. Toutes ces infractions sont prévues aux articles 102 paragraphe 1 et aux articles 105, 191, 193, 287 du Code Pénal.

841. S'agissant de M. Birame, le Tribunal a aussi retenu la charge de diriger une association non reconnue, quant à MM. Dah Ould Boushab, Ali Ould M'barek Fall, Cheikh Ould Abidine Salem et Balla Touré, ils ont aussi été jugés coupables de participation à la conduite d'une association non reconnue (sanction prévue aux articles 3 et 8 la loi relative aux associations).

842. Le verdict rendu par la Tribunal a condamné MM. Birame, Ali Puld M'barek Vall, Cheikh Ould Abidine Ould Salem à un an de prison dont six mois fermes.

843. Quant à MM. Dah Ould Boushab, Mouloud Ould Biyé, Ball Touré, ils ont été condamnés à six mois de prison avec sursis et d'une amende de 12 000 Ouguiyas pour chacun d'entre eux et sont aussi condamnés à verser une indemnité compensatrice à la partie civile composée de Mahamad Ould Jafar (500 000 Ouguiyas), Sidi Mohamed Ould Mohamed Mahmoud, Niang Amadou, Ahmed Ould Sidi et Samory Alassane (200 000 Ouguiyas pour chacun) en raison de l'atteinte à l'intégrité physique et morale des intéressés.

844. Question 5 : Veuillez fournir des informations sur le sort des personnes auxquelles il est fait référence précédemment. Veuillez également indiquer tous les détails des enquêtes ou autres demandes de renseignements qui auraient été menées. Si aucune enquête n'a eu lieu, ou si les enquêtes ont été peu concluantes, veuillez en expliquer les raisons.

845. Réponse 5 : Ces personnes sont toute en vie, celles en détention sont dans des conditions satisfaisantes et reçoivent les visites qu'elles souhaitent. Dans ce cadre, toutes les demandes de visite à M. Birame et ses compagnons ont reçu des réponses favorables. Cela fut notamment le cas pour les demandes formulées par les députés italiens venus à Nouackchott, de même que celle de M. André Barthélémy, Président de l'ONG « Agir Ensemble pour les Droits de l'Homme » qui a séjourné en Mauritanie. Les personnes condamnées à des peines avec sursis sont aujourd'hui libres et mènent une vie normale.

846. S'agissant des enquêtes menées concernant ce cas précis, ce sont essentiellement celles menées par la Police et surtout celle de la Brigade mixte de la Gendarmerie Nationale qui a été prise en compte par la justice puisque la Police s'est constituée partie civile dans cette affaire. Les conclusions de cette dernière sont évoquées plus haut. Le Gouvernement mauritanien, saisit, enfin, cette opportunité pour réitérer aux différents titulaires de mandats

intéressés par cette affaire sa disponibilité à coopérer dans l'objectif de garantir la protection des droits des personnes concernées mais aussi à contribuer à l'atteinte des objectifs du Conseil des Droits de l'Homme visant à assurer la pleine et entière jouissance des droits fondamentaux pour tous.

### **Commentaires et observations de la Rapporteuse spéciale**

847. La Rapporteuse spéciale remercie le Gouvernement mauritanien de sa réponse et des informations détaillées transmises sur chacune des questions soulevées dans la communication, notamment sur la nature des charges retenues à l'encontre des personnes citées dans la communication, sur la base légale ayant prévalu à leur arrestation et placement en garde à vue. Elle note avec satisfaction les informations indiquant que toutes les demandes de visite à M. Biram Ould Dah Ould Abeid et ses compagnons leur ont été accordées. Elle prend également note du fait que le Gouvernement réfute les allégations selon lesquelles les forces de police auraient employé la force contre M. Ould Dah Ould Abeid et ses compagnons. Cependant, la Rapporteuse spéciale demeure préoccupée par la situation de M. Biram Ould Dah Ould Abeid, d'autant plus qu'il s'agit de la troisième communication envoyée par des détenteurs de mandats de procédures spéciales en 2010 dont fait l'objet le président de l'Initiative pour la Résurgence du Mouvement Abolitionniste en Mauritanie.

## **Mexico**

### **Comunicación enviada**

848. El 28 de junio de 2010, la Relatora Especial sobre la independencia de magistrados y abogados junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con los **actos de hostigamiento y las amenazas**, incluidas amenazas de muerte, recibidas por las Sras. Blanca Mesina Nevarez y Silvia Vázquez Camacho.

849. La Sra. Blanca Mesina es hija de Miguel Ángel Mesina López, agente de la Secretaría de Seguridad Pública de Tijuana, quien fue arrestado y presuntamente torturado en marzo de 2009 en las instalaciones del Octavo Batallón Militar por agentes del grupo GOPE de Inteligencia Militar de Tijuana, Baja California. Sobre este caso, se envió una comunicación al Gobierno el 28 de mayo de 2009.

850. La Sra. Silvia Vázquez es abogada defensora de los derechos humanos y colabora con la Comisión Ciudadana de Derechos Humanos del Noroeste y con la Comisión Mexicana de Defensa y Promoción de los Derechos Humanos. Tanto Blanca Mesina como Silvia Vázquez trabajan en la denuncia y documentación de casos de tortura en la región.

851. Según las informaciones recibidas, durante los últimos meses, las Sras. Blanca Mesina Nevarez y Silvia Vázquez Camacho habrían sido víctimas de actos de hostigamiento y amenazas, incluidas amenazas de muerte, presuntamente por su labor de defensa y acompañamiento de familiares y víctimas de tortura bajo arraigo en instalaciones militares de Tijuana, Baja California.

852. Tanto Blanca Mesina como Silvia Vázquez habrían recibido llamadas telefónicas amenazantes, han sido objeto de seguimiento y vigilancia y habrían recibido amenazas de muerte contra ellas y contra sus familias. El último incidente habría tenido lugar el 18 de mayo de 2010 cuando Blanca Mesina habría sido seguida y posteriormente recibido amenazas de muerte por parte de un hombre encapuchado.

853. Según las informaciones recibidas, como consecuencia de las amenazas recibidas, tanto Blanca Mesina como Silvia Vázquez habrían recibido medidas de protección por parte de las autoridades federales mexicanas las cuales, sin embargo, habrían sido suspendidas recientemente sin ninguna explicación. Posteriormente, el 25 de mayo de 2010, las autoridades les habrían proporcionado un número de teléfono de seguridad al que podrían llamar durante las 24 horas en caso de emergencia. Sin embargo, dicho número correspondería a un servicio de coordinación que estaría disponible únicamente en horario de oficina y sin conexión con la policía regional.

854. Según las últimas informaciones recibidas, el 4 de junio de 2010, ante las reiteradas amenazas, la Comisión Interamericana de Derechos Humanos habría otorgado medidas cautelares. En este sentido, la Comisión Interamericana habría solicitado al Gobierno adoptar las medidas necesarias para garantizar la vida y la integridad física de Blanca Mesina y Silvia Vázquez y sus familias.

855. Se expresó grave preocupación por la integridad física y psicológica de las Sras. Blanca Mesina Nevarez y Silvia Vázquez Camacho y por el hecho de que las amenazas recibidas pudieran estar relacionadas con sus actividades de promoción y protección de los derechos humanos, en particular por su labor de defensa y acompañamiento de familiares y víctimas de tortura bajo arraigo en instalaciones militares de Tijuana. Se expresó asimismo preocupación por la presunta suspensión de las medidas de protección otorgadas por las autoridades mexicanas así como por la eficacia de las mismas. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en México.

#### **Comunicaciones recibidas**

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

#### **Observaciones de la Relatora Especial**

857. La Relatora Especial lamenta que, en el momento de finalizar este informe, no se haya contado con una respuesta por parte del Gobierno Mexicano. La Relatora Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato es por ello que insta al Gobierno de México a que le proporcione una respuesta acerca del presente caso.

858. La Relatora Especial reitera su especial preocupación por el contexto de creciente violencia e inseguridad que se vive en ese país. A la luz de ello, es inquietante la vulnerabilidad que diariamente afecta a los abogados que se han especializado en la denuncia de situaciones que afectan los derechos humanos. La Relatora considera que no es ocioso recordar los Principios Básicos sobre la Función de los Abogados, con especial énfasis en los numerales 16 y 17, que delimitan las condiciones que todo estado debe garantizar a los abogados en el ejercicio de su profesión, para asegurar que la misma sea llevada a cabo sin intimidaciones, obstáculos, acosos o interferencias; haciendo hincapié en que, cuando la seguridad de los abogados sea amenazada como consecuencia del ejercicio de su función, recibirán de las autoridades la protección adecuada.

### **Morocco**

#### **Communication envoyée**

859. Le 11 mai 2010, la Rapporteuse spéciale sur l'indépendance des juges et des avocats, conjointement avec le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants ainsi qu'avec le Rapporteur spécial sur la

promotion et la protection des droits de l'homme et des libertés fondamentales dans le cadre de la lutte antiterroriste, a envoyé un appel urgent concernant le traitement subi par **Mme Doha Aboutabit** dans le cadre de sa garde à vue dans les installations de la police judiciaire de Casablanca suite à son arrestation le 3 décembre 2009. Mme Aboutabit est, depuis juillet 2009, Chef de service à l'hôpital Aït-Qamra dans la région d'Al-Hoceima.

860. Selon les informations reçues, le 3 décembre 2009, Mme Aboutabit aurait été arrêtée au domicile de ses parents à Rabat et aurait été emmenée au poste de police d'Al-Maarif à Casablanca. Mme Aboutabit serait restée détenue douze jours dans les locaux des services de sécurité, soit la durée légale maximum de garde à vue prévue dans le cadre d'une enquête préliminaire en cas d'infraction terroriste. Le juge d'instruction de la Cour d'appel de Rabat l'aurait placée sous mandat de dépôt à la prison de Salé où elle est à ce jour encore détenue.

861. Mme Aboutabit serait accusée d'avoir « financé le terrorisme » pour avoir, il y a quelques années, prêté une somme d'argent à son frère. Celui-ci se serait par la suite rendu en Irak où, selon les autorités, il aurait trouvé la mort en 2008.

862. Selon les informations reçues, durant sa garde à vue, Mme Aboutabit aurait subi de graves tortures psychologiques commises par des policiers. En l'occurrence, ceux-ci l'auraient menacé de brûler son visage avec un briquet, ainsi que de ne plus revoir son enfant si elle ne reconnaissait pas les actes dont on l'accusait. Suite à ces menaces, elle aurait confirmé les aveux suggérés par la police.

863. Tout au long de sa garde à vue, Mme Aboutabit n'aurait pas eu la possibilité de communiquer avec un avocat, pas même quarante-huit heures après la première prolongation de la garde à vue tel qu'il est prévu dans le Code de procédure pénale (art. 66) et par la loi en matière d'infraction terroriste au Maroc.

864. De sérieuses craintes sont exprimées au sujet de l'intégrité physique et mentale de Mme Aboutabit.

### **Communication reçue**

865. Par lettre datée du 11 juin 2010, le Gouvernement a indiqué que l'enquête diligentée a révélé que la dénommée Doha Aboutabit a été arrêtée le 3 décembre 2009, par les services de la brigade nationale de la police judiciaire dans le respect total des lois en vigueur et sous contrôle effectif du parquet.

866. Mme Doha Aboutabit a été auditionnée le 15 décembre 2009 par le juge d'instruction près l'annexe de la cour d'appel à Salé et a été placée sous mandat de dépôt à la prison civile de ladite ville.

867. Les faits qui lui sont reprochés sont prévus et réprimés par l'article 218-4 du code pénal qui énonce : « Constituent des actes de terrorisme les infractions ci-après : le fait de fournir, de réunir ou de gérer par quelque moyen que ce soit, directement ou indirectement, des fonds, des valeurs ou des biens dans l'intention de les voir utiliser ou en sachant qu'ils seront utilisés, en tout ou en partie, en vue de commettre un acte de terrorisme, indépendamment de la survenance d'un tel acte et le fait d'apporter un concours ou de donner des conseils à cette fin. »

868. Concernant son placement en garde à vue : il y a lieu de signaler que le contact des personnes gardées à vue avec leurs avocats, est régi par les articles 66 et 80 du code de procédure pénale qui édicte que : « toute personne gardée à vue peut en cas de prolongation de cette mesure demander à l'officier de police judiciaire de communiquer avec son avocat, l'exercice de ce droit est subordonné à l'autorisation du ministère public, qui peut dans le cadre des affaires liées au terrorisme, retarder la communication entre l'avocat et son client mais sans dépasser le délai de 48h à compter de la 1ère prolongation. ». L'exercice de ce

droit est subordonné à la formulation d'une demande par la personne gardée à vue. Or, Mme Doha Aboutabit n'a formulé aucune demande en ce sens.

869. Concernant l'allégation de torture et de mauvais traitement : l'allégation selon laquelle Doha Aboutabit aurait subi de graves tortures psychologiques et des menaces par des policiers durant sa garde à vue est sans fondement car, aucune plainte pour torture ou menace n'a été déposée par l'intéressée ou son représentant, ni durant ni suivant sa garde à vue.

#### **Commentaires et observations de la Rapporteuse spéciale**

870. La Rapporteuse spéciale remercie le Gouvernement de ses réponses. Elle prend note des chefs d'accusation retenus à l'encontre de Mme Doha Aboutabit, mais prie le Gouvernement de fournir des informations concernant les faits soutenant l'accusation de financement de terrorisme dirigée contre Mme Aboudabit.

871. Concernant l'allégation de torture et de mauvais traitement que Mme Aboudabit aurait subis durant sa garde à vue, la Rapporteuse spéciale tient à préciser que même en l'absence d'une plainte formelle, les Etats parties à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants sont tenus de procéder immédiatement à une enquête impartiale, chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis, en vertu de l'article 12 de ladite Convention.

872. A cet égard, la Rapporteuse spéciale souhaiterait également rappeler le paragraphe 16 des Principes directeurs applicables au rôle des magistrats du parquet, 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 (Cuba) du 27 août au 7 septembre 1990, selon lequel « [l]orsque les magistrats du parquet reçoivent contre des suspects des preuves dont ils savent ou ont des motifs raisonnables de penser qu'elles ont été obtenues par des méthodes illicites, ... et impliquent en particulier la torture ou un traitement ou un châtiment cruel, inhumain ou dégradant, ... ils refusent d'utiliser ces preuves contre toute personne autre que celles qui ont recouru à ces méthodes, ou informent le tribunal en conséquence, et prennent toutes les mesures nécessaires pour les faire traduire en justice. »

## **Nigeria**

#### **Communication sent**

873. On 28 April 2010, the Special Rapporteur, 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, sent an urgent appeal concerning the statement made by the Governor of south-eastern state of Abia that death row inmates should be executed to ease prison congestion. We are informed that the statement was uttered at a meeting of thirty-six State governors held on 20 April 2010. According to information received, there are currently about 870 inmates on death row, including women and juveniles.

874. In this connection, we would like to draw your Government attention to two main substantive areas of concern relating to the above mentioned statement, which in our view, needs to be addressed urgently.

875. First, there have been concerns raised that the Nigerian criminal justice system does not guarantee fair trial, as reflected by the national study group on the death penalty in 2004 and by the presidential commission on the reform of the administration of justice in 2007. Furthermore, we were informed that most people have been sentenced to death following trials which did not conform to international fair trial standards.

876. The Special Rapporteur on extrajudicial, summary or arbitrary executions raised concern in his mission report to Nigeria with regard to widespread procedural irregularities in death penalty cases and conditions on death row. He indicated that torture is consistently used by the Nigeria police to extract confessions and that these confessions have often been critical to the conviction of persons charged with capital offences. Moreover many defendants in capital trials have effectively had no legal representation and legal aid is not available for appeals. (E/CN.4/2006/53/Add.4, Para. 28).

877. Following his visit to the country in 2007, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment echoed these concerns pointing to his finding that torture and ill-treatment are widespread in police custody, and particularly systemic at criminal investigation departments, and that torture is frequently used for the purpose of obtaining confessions (A/HRC/7/3/Add.4, paras. 37 and 40).

878. These concerns, the Special Rapporteurs are informed, continue to prevail in the criminal justice system. The majority of those on death row have been sentenced to death on the basis of confessional statements allegedly obtained under torture and some had no legal representation during trial or the preparation of the defense was often inadequate as counsel are not given timely access to the prosecution dossier.

#### **Communication received**

879. At the time this report was finalized, no response to this communication had been received.

#### **Comments and observations of the Special Rapporteur**

880. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to her communication dated 28 April 2010. She remains deeply concerned at the situation of death row inmates, including women and children. Considering the irreversible nature of the death penalty, she urges the Government of Nigeria to provide substantive information about the issues raised in the aforementioned communication.

### **Occupied Palestinian Territory**

#### **Communication sent**

881. On 29 April 2010, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the recent executions of Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih and the alleged imminent execution of several people who were sentenced to death by the Gaza Military Court.

882. Mr. Mohammed Ibrahim Isma'il (al-Sabe'), aged 37 and a resident of Rafah, was sentenced to death on 3 November 2009, by the Gaza Military Court after he was convicted on charges of treason and involvement in a killing. He was partly convicted on the basis of his own confession which had allegedly been made as a result of torture.

883. Mr. Nasser abu Freih, aged 34, was sentenced to death by the Gaza Military Court on 22 February 2009, after being convicted of charges of "collaboration with hostile parties".

884. It is reported that on 15 April 2010, the authorities in Gaza executed Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih.

885. The Special Rapporteurs have also received information that since 2007 the Gaza Military Court has sentenced several people to death after being convicted on charges of treason. These people are at imminent risk of execution including: (1) Emad Mahmoud Sa'd Sa'd, aged 25, a resident of the West Bank who was sentenced to death on 28 April 2008; (2) Wael Sa'eed Sa'd Sa'd, aged 27, a resident of the West Bank who was sentenced to death on 15 July 2008; (3) Mohammad Sa'd Mahmoud Sa'd, a resident of the West Bank who was sentenced to death on 15 July 2008. He was tried in absentia; (4) Ayman Ahmad Awad Daghamah, aged 28, a resident of the West Bank who was sentenced to death on 12 November 2008; (5) Mahran Abu Jodah, aged 28, a resident of Hebron who was sentenced to death on 25 January 2009; (6) Anwar Bargheet, aged 59, a resident of Hebron who was sentenced to death 28 April 2009; (7) Saleem Mohammad El Nabheen aged 27, from Al-Boreij camp in Hebron who was sentenced to death 7 October 2009. He is currently being held at Gaza Central Prison; (8) Abed Kareem Mohammad Shrier, aged 35, from Gaza who was sentenced to death 29 October 2009. He is currently being held at Gaza Central Prison; (9) Izz El Din Rasem Abed El Salam Daghri, aged 38, who was sentenced to death on 9 November 2009, after being convicted on charges of treason.

886. The Special Rapporteurs have previously addressed a communication dated 16 November 2009, to the authorities in Gaza regarding the case of Saleem Mohammed Saleem al-Nabahin, (A/HRC/13/39/Add.1, para 305) who was sentenced to death by a military court in Gaza, to which we are yet to receive a response. In that communication we expressed concern regarding imposition of the death penalty on grounds of treason and the provisions of Article 131 of the Revolutionary Penal Code which permits the imposition of the death sentence for conduct which does not involve intentional killing, as required by international law which restricts imposition of the death penalty to the most serious crimes.

#### **Communication received**

887. At the time this report was finalized, no response to this communication had been received.

#### **Comments and observations of the Special Rapporteur**

888. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to the above-mentioned communication. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of the Occupied Palestinian Territory to transmit responses to the above-mentioned communication.

### **Occupied Palestinian Territory (The Authorities in Gaza)**

#### **Communication sent**

889. On 29 April 2010, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the recent executions of Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih and the alleged imminent execution of several people who were sentenced to death by the Gaza Military Court.

890. Mr. Mohammed Ibrahim Isma'il (al-Sabe'), aged 37 and a resident of Rafah, was sentenced to death on 3 November 2009, by the Gaza Military Court after he was convicted on charges of treason and involvement in a killing. He was partly convicted on the basis of his own confession which had allegedly been made as a result of torture.



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892. It is reported that on 15 April 2010, the authorities in Gaza executed Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih.

893. The Special Rapporteurs have also received information that since 2007 the Gaza Military Court has sentenced several people to death after being convicted on charges of treason. These people are at imminent risk of execution including: (1) Emad Mahmoud Sa'd Sa'd, aged 25, a resident of the West Bank who was sentenced to death on 28 April 2008; (2) Wael Sa'eed Sa'd Sa'd, aged 27, a resident of the West Bank who was sentenced to death on 15 July 2008; (3) Mohammad Sa'd Mahmoud Sa'd, a resident of the West Bank who was sentenced to death on 15 July 2008. He was tried in absentia; (4) Ayman Ahmad Awad Daghmah, aged 28, a resident of the West Bank who was sentenced to death on 12 November 2008; (5) Mahran Abu Jodah, aged 28, a resident of Hebron who was sentenced to death on 25 January 2009; (6) Anwar Bargheet, aged 59, a resident of Hebron who was sentenced to death 28 April 2009; (7) Saleem Mohammad El Nabheen aged 27, from Al-Boreij camp in Hebron who was sentenced to death 7 October 2009. He is currently being held at Gaza Central Prison; (8) Abed Kareem Mohammad Shrier, aged 35, from Gaza who was sentenced to death 29 October 2009. He is currently being held at Gaza Central Prison; (9) Izz El Din Rasem Abed El Salam Daghri, aged 38, who was sentenced to death on 9 November 2009, after being convicted on charges of treason.

894. The Special Rapporteurs have previously addressed a communication dated 16 November 2009, to the authorities in Gaza regarding the case of Saleem Mohammed Saleem al-Nabahin, (A/HRC/13/39/Add.1, para 305) who was sentenced to death by a military court in Gaza, to which we are yet to receive a response. In that communication we expressed concern regarding imposition of the death penalty on grounds of treason and the provisions of Article 131 of the Revolutionary Penal Code which permits the imposition of the death sentence for conduct which does not involve intentional killing, as required by international law which restricts imposition of the death penalty to the most serious crimes.

#### **Communication received**

895. At the time this report was finalized, no response to this communication had been received.

#### **Comments and observations of the Special Rapporteur:**

896. The Special Rapporteur regrets the absence, at the time of the finalization of the report, of an official reply to the above-mentioned communication. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the authorities in Gaza to transmit responses to the above-mentioned communication.

### **Pakistan**

#### **Communication sent**

897. On 23 December 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the detention and sentence to death of **Mr. Sarabjit Singh**.

898. According to the information received, on 30 August 1990, Mr. Sarabjit Singh, a national of India, usually residing in the Bhikiwind District, Tarn Taran Punjab, India, was arrested on the border between India and Pakistan by the Pakistani security forces on charges of espionage for the Government of India and involvement in the bomb blasts in Faisalabad and Lahore. Mr. Sarabjit Singh was presented with no warrant for his arrest. Mr. Sarabjit Singh's fate and whereabouts were unknown until after 9 months following his arrest when the Indian Government and later Mr. Sarabjit Singh's family were notified that Mr. Sarabjit Singh was in the custody of Pakistan.

899. It is reported that this is a case of mistaken identity. Mr. Sarabjit Singh was arrested in Pakistan as Manjit (Manjeet) Singh, allegedly accused of involvement in terrorist attacks and espionage. According to the source, Mr. Sarabjit Singh was forced to sign a confession statement prepared by the officers interrogating him.

900. Furthermore, it is reported that from 1991 until 2003 Mr. Sarabjit Singh was held in solitary confinement in a small cell without sufficient space for him to stand upright and denied exposure to natural sunlight. According to the source, Mr. Sarabjit Singh was subjected to ill-treatment and beaten up upon his arrest. The source further alleges that from 1991, Mr. Sarabjit Singh was shackled to the wall of his prison cell until the intervention of a human rights organization from Canada in 2003.

901. It is further reported that on 3 October 1991, Mr. Sarabjit Singh was charged by a Special Judge in Lahore under sections 302 and 307 of the Pakistani Penal Code and section 3 of the Explosive Substances Act and was sentenced to death. According to the information received, the trial was conducted in English, which Mr. Sarabjit Singh does not speak nor understand. Subsequently, Mr. Sarabjit Singh appealed to Lahore High Court. During the proceedings in High Court, Mr. Sarabjit Singh denied having given a confessional statement voluntarily. In its judgment dated 10 December 2001, Lahore High Court dismissed the appeal and confirmed the judgment issued by the Special Judge in Lahore on 3 October 1991. Similarly, Mr. Sarabjit Singh's appeal to the Supreme Court was denied by order dated 18 August 2005. The Review Petition was also dismissed in default on 24 June 2009 on the grounds of non-appearance of Mr. Sarabjit Singh's previous lawyer. Subsequent application for reconsideration was returned by the registrar of the Supreme Court on the basis that it was inadmissible.

902. It is further reported that Mr. Sarabjit Singh's current lawyer had deposited criminal petitions No. 529-531 of 2003 and No. 229-531 of 2005 requesting the President of Pakistan to release Mr. Sarabjit Singh. In 2008, the President confirmed Mr. Sarabjit Singh's death sentence and rejected the mercy petition. According to the information received, Mr. Sarabjit Singh's execution was set for 30 April 2008, but was indefinitely deferred following intervention by the Prime Minister of Pakistan.

903. Reportedly, the petitions filed by Mr. Sarabjit Singh's lawyer contain evidence that Mr. Sarabjit Singh was not involved in the bomb blasts and acts of espionage, on the basis of which he had been convicted and sentenced to death. Mr. Sarabjit Singh's name does not appear on the First Information Report (FIR), a written document usually prepared by the police in India and Pakistan. The name mentioned in FIR is that of Mr. Manjit Singh. According to the information received, Mr. Manjit Singh was arrested by the Indian Police on 16 December 2010.

904. Mr. Sarabjit Singh is currently detained in Central Jail Kot Lakhpat, Lahore, Pakistan. According to the information received, Mr. Sarabjit Singh suffers from various infections and diseases, namely infection on his feet, high blood pressure and poor circulation, curvature of spine and ulcers on his body. Mr. Sarabjit Singh has allegedly been denied access to medication and medical treatment.

### Communications received

905. In a letter dated 30 December 2010, the Government acknowledged receipt of the communication and indicated that it has been transmitted to the capital for serious consideration and early response.

906. In a letter dated 8 April 2011, the Government indicated that the matter had been referred to the authorities concerned for clarification. Investigations have revealed that the case of Mr. Sarabjit Singh is not a case of mistaken identity as allegedly portrayed in the communication. The concerned authorities have provided the following particulars of Mr. Sarabjit Singh:

Name: Mr. Manjeet Singh  
 Alias: Sarabajit Singh  
 Son of: Saiakhan Singh

907. The authorities have also conveyed that Mr. Sarabjit Singh, after following the due judicial process, was sentenced to death on charges of causing the death of 18 and injuries to 118 persons through bomb explosions at four different places in Pakistan. The judicial process, involving the Local Court, the Provincial Court as well as the Apex Court, the Supreme Court of Pakistan, provided him an ample opportunity to prove his innocence. Since April 2008, the implementation of the death sentence to Mr. Sarabajit Singh has been stayed by the President of Pakistan for an indefinite period.

908. The Government is of the view that the reference made in the communication to an individual named Manjot Singh arrested by the Indian Police on 16 December 2010, has no connection with the case of Mr. Sarabajit Singh.

### Comments and observations of the Special Rapporteur:

909. The Special Rapporteur thanks the Government of Pakistan for its response to the urgent appeal dated 23 December 2010. However, due to the irreversible nature of the death penalty and the serious nature of this case, she urges the Government to clarify all the issues raised in the communication, in particular on the allegations that the petitions filed by Mr. Sarabjit Singh's lawyer contain evidence that Mr. Sarabjit Singh's name does not appear on the First Information Report (FIR), a written document usually prepared by the police in India and Pakistan; the name mentioned in FIR is that of Mr. Manjit Singh. According to the information received, Mr. Manjit Singh was arrested by the Indian Police on 16 December 2010.

## Panamá

### Comunicación enviada

910. El 6 de septiembre de 2010, la Relatora Especial sobre la independencia de magistrados y abogados, envió un llamamiento urgente junto con el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión; el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes; el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias; y la Relatora Especial sobre la situación de los defensores de los derechos humanos; señalando a la atención urgente del Gobierno, la información recibida en relación con los sucesos ocurridos en el departamento de Bocas del Toro entre los días 7 a 10 de julio de 2010 y, en conexión con éstos, en relación con la situación de ciertos sectores de la sociedad civil panameña que estarían trabajando en la investigación y seguimiento de dichos sucesos. En particular, se llamaba la atención sobre la situación de la Lic. **Magaly Castillo** y la **organización Alianza Ciudadana Pro Justicia**. La Lic. Castillo es abogada y Directora Ejecutiva de la

Alianza Ciudadana Pro Justicia. Asimismo, se llamaba la atención sobre la situación de la organización y los miembros de Human Rights Everywhere.

911. La Sra. Castillo y el Sr. Francisco Gómez Nadal, éste último representante legal de la organización Human Rights Everywhere en Panamá, han sido objeto de llamamientos urgentes por parte del Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión y de la Relatora Especial sobre la situación de los defensores de los derechos humanos enviados el 19 de abril y el 29 de julio de 2010, respectivamente.

912. Según las informaciones recibidas, durante los días 7 y 10 de julio de 2010, se habrían producido enfrentamientos en Changuinola, departamento de Bocas del Toro, entre cuerpos y fuerzas de seguridad del Estado panameño y trabajadores de las plantaciones bananeras, en su mayor parte miembros de la comunidad indígena Ngäbe-Bugle. Desde el 2 de julio, estos trabajadores se encontraban realizando una huelga en contra de ciertos artículos de la recién aprobada Ley 30 de 12 de junio de 2010. Tras varios días de huelga, las fuerzas de seguridad habrían decidido intervenir para disolver una manifestación de los trabajadores de las plantaciones haciendo uso de la fuerza y de determinado tipo de material antidisturbios, incluyendo cartuchos impulsores de perdigones de plomo (calibre 12), balines de goma, munición de diverso calibre y gases lacrimógenos de diverso tipo.

913. Según las autoridades, como consecuencia de dichos enfrentamientos resultaron al menos dos personas muertas, los señores Antonio Smith y Virgilio Castillo, quienes según la información recibida, fallecieron por la acción directa de las fuerzas del orden. Asimismo, se recibió información según la cual, además de las personas mencionadas, habrían fallecido otras cinco personas como consecuencia de los enfrentamientos, incluyendo tres menores de edad por el uso de gases lacrimógenos.

914. Como consecuencia de estos enfrentamientos, se habrían producido más de 150 heridos y más de un centenar de detenidos. Entre los heridos habría un gran número de casos con impacto de perdigones de plomo en la cabeza y el tórax. Asimismo, se recibió información fiable sobre casos de personas detenidas que habrían podido sufrir tortura u otros tratos crueles, inhumanos o degradantes a manos de las fuerzas y cuerpos de seguridad, incluyendo el caso de una persona que habría sido arrodillada, esposada y apuntada con una pistola; el caso de otra a la que le habrían vertido vinagre en las heridas; numerosos casos de personas que habrían recibido gas pimienta en la cara; otro caso al cual antes de darle de comer habrían rociado con gasolina la comida; y diversos casos en los que algunas mujeres que habrían sido desnudadas y humilladas. El 21 de julio, el Gobierno habría anunciado la creación de una comisión especial para investigar los hechos.

915. En el contexto de los acontecimientos ocurridos en Bocas del Toro, el Sr. Valentín Palacio habría permanecido en paradero desconocido entre los días 8 y 12 de agosto. El Sr. Palacio habría reaparecido el día 12 de agosto y presentado en conferencia de prensa por el Director de la Policía Nacional. Según los informes recibidos, tras los sucesos de Bocas del Toro, se habrían intensificado los actos de intimidación y acoso por parte de la prensa nacional y de miembros de partidos políticos contra ciertos sectores de la sociedad civil panameña, así como contra destacados defensores de los derechos humanos en el país.

916. En este contexto, el día 10 de agosto, miembros de la organización de la sociedad civil Alianza Ciudadana Pro Justicia acompañaron a varios miembros de la organización Asamblea de la Sociedad Civil para presentar un recurso de habeas corpus en nombre del Sr. Palacio ante la Corte Suprema de Justicia.

917. Posteriormente, el 16 de agosto de 2010, la señora Magaly Castillo habría recibido una citación de la Fiscalía Auxiliar de Panamá para comparecer al día siguiente a declarar dentro del sumario del caso del Sr. Palacio. La Sra. Castillo habría acudido a dicha citación pero se habría negado a prestar declaración por considerar que el Fiscal Auxiliar de Panamá

mantiene una opinión negativa sobre la sociedad civil, la cual habría hecho pública en varias ocasiones mediante declaraciones a la prensa.

918. El día 20 de agosto, el partido político Cambio Democrático habría publicado en el diario “La Prensa” un anuncio a página completa ofreciendo una recompensa de 5,000 Balboas (equivalente a USD 5,000) a quienes pudieran dar información “que aclare la falsa desaparición de Valentín Palacio”. El anuncio habría acusado a miembros de la oposición política así como a organizaciones de la sociedad civil panameña, mencionando explícitamente a la organización Human Rights Everywhere, de realizar falsas acusaciones contra el Gobierno y el Presidente de la República. La mencionada organización habría trabajado activamente en la investigación de los hechos acaecidos en Bocas de Toro, en el mes de julio.

919. El día de la publicación del anuncio arriba mencionado, miembros de varias organizaciones de la sociedad civil habrían expresado su creciente temor ante la intensificación de actos de acoso e intimidación contra ellos tanto en prensa nacional como en varios canales de televisión.

#### **Comunicación recibida**

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

#### **Observaciones de la Relatora Especial**

921. La Relatora Especial lamenta que hasta el momento, no se haya recibido respuesta a la comunicación enviada e insta al Gobierno de Panamá a proporcionar la información relevante lo antes posible. La Relatora desea subrayar que las respuestas a sus comunicaciones constituyen una parte importante de la cooperación con los estados y recuerda que la Resolución 8/6 del Consejo de Derechos Humanos, en su parágrafo tercero insta a todos los gobiernos a cooperar con la Relatora Especial y a prestarle asistencia en el desempeño de su cometido, a facilitarle toda la información necesaria y a responder sin dilaciones indebidas a las comunicaciones que les haga llegar.

## **Perú**

#### **Comunicación enviada**

922. El 16 de marzo de 2010, la Relatora Especial sobre la independencia de magistrados y abogados, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos enviaron un llamamiento urgente en relación a la situación del **Juez Jorge Barreto**.

923. **El Sr. Barreto** se encontraría investigando el mayor caso de corrupción de los últimos años en el Perú, habría estado afrontando indebidas presiones del Poder Ejecutivo en su contra. En dicho proceso judicial a su cargo, estarían involucrados dos funcionarios de alto nivel del Gobierno, los señores Rómulo León Alegría y Alberto Quimper. Estos funcionarios habrían sido acusados de recibir dinero a cambio del otorgamiento de concesiones de pozos de petróleo y de lotes de exploración en favor de la compañía Discovery Petroleum. El Juez Barreto debía de emitir su informe final en días próximos al de la comunicación.

924. De conformidad con las alegaciones recibidas, el Primer Ministro habría pedido públicamente al Juez abandonar el caso. Como el Juez no accedió a presentar su dimisión, el Primer Ministro habría pedido formalmente al Presidente de la Corte Suprema de Justicia

que solicitara a la Sala Plena que cambiara al Juez Barreto liberándole del caso, y procediendo a designar a otro juez en su lugar.

925. Se afirmó que éste sería un grave caso de interferencia del Poder Ejecutivo en la autonomía del Poder Judicial. Se ha recordado que la Constitución Política de la República del Perú garantiza la inamovilidad del juez en su cargo y protege su independencia e imparcialidad. Se afirmó que cambiar al juez antes de que rindiera su informe final, dilataría el proceso y podría beneficiar a los implicados.

#### **Comunicación recibida**

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

#### **Comentarios y observaciones de la Relatora Especial**

927. La Relatora Especial invita al Estado a enviar información relativa a este caso lo antes posible. Preocupa sobremanera el silencio del Estado frente a una situación que, en principio, representaría un atropello a la independencia de la Judicatura, una intromisión indebida en el proceso y toma de decisiones judiciales, una falta al principio de inamovilidad de los jueces, y, una absoluta inobservancia de un procedimiento con garantías que culminara con la determinación legal de separación del cargo de juez.

### **Qatar**

#### **Communication sent**

928. On 8 June 2010, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention, sent an urgent appeal concerning the arrest and detention of **Mr. Fawaz Al-Attiah**, a former Qatari national and who holds British nationality. Mr. Al-Attiah is the former spokesperson of the Qatari Ministry of Foreign Affairs.

929. On 29 October 2009, Mr. Al-Attiah was extradited from Riyadh, Saudi Arabia, by men in civilian clothes and flown to Qatar in a private plane. He has been reportedly held in detention in Qatar since then.

930. The arrest, extradition and detention of Mr. Al-Attiah would be reportedly connected to the fact that he had started legal proceedings against the Prime Minister for allegedly dispossessing him of land and property and attacking his dignity.

931. According to reports received, Mr. Al-Attiah is being held in solitary confinement since his transfer to Qatar. In April 2010, Mr. Al-Attiah was reportedly relocated to the main centre of the State security services. His detention is allegedly renewed every month based on charges under articles 111 (public employee who discloses secrets of the State), 112 (anyone who illegally obtains and/ or discloses secrets of the State), and 327 (defamation) of the Qatari Penal Code.

932. Since his detention in Qatar, Mr. Al-Attiah has reportedly not had proper access to legal counsel, as his lawyer can only see him during the hearings whereby his detention is prolonged, which take place approximately once a month. Serious restrictions have reportedly been applied to family visits as well.

933. Concern is expressed about the physical and mental integrity of Mr. Al-Attiah, which appears to be deteriorating over the past few months, allegedly due to the conditions of detention. In this connection, further concern is expressed about the allegations that Mr. Al-Attiah is being held in solitary confinement for more than six months.

**Communication received**

934. In a letter dated 5 August 2010, the Government acknowledged receipt of the communication and indicated that a response to it would be provided as soon as the requested information is received from the competent authorities.

**Comments and observations of the Special Rapporteur:**

935. While welcoming the transmission of the communication to the competent authorities, the Special Rapporteur regrets the absence of an official response to the communication dated 8 June 2010. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of Qatar to transmit responses to the above-mentioned communication.

**Russian Federation****Communication sent**

936. On 23 June 2010, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding **Ms. Sapiyat Magomedova**, human rights lawyer in the Republic of Dagestan. Ms. Magomedova works at the Omarov and Partners law firm, which is well-known for its commitment to human rights and frequently takes on cases related to abductions, torture and extrajudicial executions in the Republic of Dagestan. Ms. Sapiyat Magomedova has also filed four applications with the European Court of Human Rights, claiming violations of the rights of her clients by the police and the prosecutor's office in Khasavyurt. Ms. Magomedova had reportedly been previously threatened by the prosecutor and by members of the investigative committee under the prosecutor's office in Khasavyurt.

937. According to the information received, on 17 June 2010, at around 4:00 p.m, Ms. Sapiyat Magomedova went to the Khasavyurt police station (GOVD – City Interior Division), to visit a client, Ms. Malika Evtomirova, who had been arrested earlier that day. Ms. Magomedova was denied access to her client by a detective, Mr. Zakir Stamulov. Subsequently, Mr. Stamulov ordered four police officers from a special riot unit (OMON) of the Khasavyurt police station to remove her from the premises. The four policemen reportedly severely beat Ms. Magomedova, before dragging her out of the police station upon orders of Mr. Shamil Kerimovich Temigereev, the chief of police. Ms. Magomedova's mobile phone was smashed and her chain stolen, as she was left lying unconscious outside the security checkpoint of the police station.

938. Ms. Magomedova was taken by ambulance to the Khasavyurt City Hospital, where she remained unconscious until the evening. A staff forensic doctor allegedly refused to record Ms. Magomedova's injuries.

939. Concern was expressed that the assault and beating of Ms. Sapiyat Magomedova by officers of the Khasavyurt police station may have been related to her activities in defence of human rights, in particular regarding the court proceedings she had initiated alleging ill-treatment and violations of clients' rights by the Khasavyurt police station and prosecutor's office. Further serious concern was expressed regarding the physical and psychological integrity of Ms. Sapiyat Magomedova.

**Communication received**

940. In a letter dated 13 August 2010, the Government responded to the communication sent on 23 June 2010 as follows. The allegations made by Ms. Sapiyat Magomedova's

lawyer concerning the use of force against her on 17 June 2010 by officers of the Internal Affairs Department in Khasavyurt, Republic of Dagestan, have been verified by the investigation department of the Bureau of Investigation reporting to the Federal Procurator's Office in Dagestan. As a result of the verification, criminal proceedings were instituted on 1 July 2010, under article 286, paragraph 3 (a), of the Criminal Code (improper exercise of authority).

941. The necessary investigative work is being conducted. The accounts of injury to, and misappropriation of the property of, Ms. Sapiyat Magomedova, and the link between those crimes and her activities in defence of human rights will be verified during the investigation. The Dagestan Procurator's Office is monitoring the investigation.

#### **Comments and observations of the Special Rapporteur**

942. The Special Rapporteur appreciates the response provided by the Russian Federation and welcomes that the necessary investigation into the assault of Ms. Magomedova is carried out.

#### **Communication sent**

943. On 29 October 2010, the Special Rapporteur, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an allegation letter concerning ill-treatment by police officers of **Ms. Sapiyat Magomedova**, a criminal lawyer in Khasavyurt, Dagestan, Russian Federation.

944. Ms. Magomedova is a member of the "Omarov and Partners" lawyers' association based in Khasavyurt, which is known for its work on cases of serious human rights violations committed by members of law enforcement agencies in Dagestan, including alleged enforced disappearances, torture and extrajudicial executions.

945. On 17 June 2010, Ms. Magomedova was allegedly severely beaten by the police and forcibly removed from Khasavyurt town police station (GOVD) where she was reportedly visiting a detained client.

946. Twice an ambulance was called by Ms. Magomedova's colleague but was not allowed to enter the GOVD premises. It had to be called a third time and then collected her outside the police checkpoint. On 17 June 2010, Ms. Magomedova was admitted to the local hospital in Khasavyurt. Local doctors reportedly refused to document Ms. Magomedova's injuries for fear of reprisals by law enforcement officials, and discharged her from hospital with only a brief medical referral note. On 18 June 2010, Ms. Magomedova was transferred to the central hospital in Makhachkala.

947. The medical records obtained from the central hospital in Makhachkala are available and confirm Ms. Magomedova's injuries are consistent with her allegations.

948. It is reported that since the conditions in the central hospital in Makhachkala were inadequate, on 21 June, Ms. Magomedova's family transferred her to a private medical center in Makhachkala where she received adequate treatment. On 30 June, Ms. Magomedova left the medical centre. It is reported that while in the medical center, Ms. Magomedova became aware of a visit by a police inspector who reportedly questioned the medical personnel about the need for Ms. Magomedova's continued hospitalisation at the medical centre.

949. It is reported that since Ms. Magomedova's health conditions continued to remain unsatisfactory, she travelled to Moscow to get adequate treatment. On 8 July 2010, with the help of a local NGO called "Grazhdanskoe Sodeistvie" ("Civil Partnership"), Ms.



Magomedova was admitted to Moscow City Clinical Hospital no. 31. On 31 July 2010, Ms. Magomedova completed her treatment.

950. It is reported that in August 2010, Ms. Magomedova was diagnosed with a tumor in her chest and underwent surgery in another hospital in Moscow. She remained in Moscow to undergo further health examination and regular check-up.

951. On 17 August 2010, Ms. Magomedova had to fly back to Dagestan to visit her mother who was unwell. Ms. Magomedova was scheduled to visit her doctor in Moscow in October.

952. It is reported that following Ms. Magomedova's allegations of being severely beaten by police, a criminal case was launched against her on charges of "public insult of state officials while on duty". It is claimed that if convicted, Ms. Magomedova would also be stripped of her license to practice law as a lawyer.

953. On 30 September 2010, travel restrictions were issued preventing Ms. Magomedova from travelling to Moscow where she was reportedly getting medical care and legal support regarding the criminal allegations brought against her.

954. Concern is expressed that Ms. Magomedova may be targeted for her legitimate activities as a lawyer. Furthermore, it is reported that although a criminal case on police ill-treatment has been launched following the attack on Ms. Magomedova, there have reportedly been a number of serious procedural violations, fabrication of false evidence, and political pressure on the investigator.

955. Further concerns are expressed regarding the physical integrity and safety of Ms. Magomedova as the police officers have not been suspended from their official duties while a criminal investigation of alleged ill-treatment has been launched against them.

#### **Communication received**

956. In a letter dated 20 December 2010, the Government replied as follows:

*(Translated from Russian)*

957. The Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations at Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit herewith information in connection with the enquiry of the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture (AL G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24) RUS 7/2010).

958. The translation of the second page is awaited.

#### **Comments and observations of the Special Rapporteur**

959. The Special Rapporteur thanks the Government for its replies, but regrets that she is not able to comment, as the translation of the second page of the reply was not available at the time the report was finalized.

#### **Communication sent**

960. On 3 December 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the ongoing judicial harassment of **Mr. Oleg Orlov**, Chairman of human rights organisation Memorial. Mr. Orlov was the subject of an allegation letter sent by the Special

Representative of the Secretary-General on the situation of human rights defenders; the Special Rapporteur on the question of torture, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 29 November 2007. Mr. Orlov was awarded the European Parliament's Sakharov Prize on 16 December 2009.

961. According to the information received, Mr. Oleg Orlov has been subjected to ongoing criminal proceedings and judicial harassment following remarks he made concerning the President of the Chechen Republic, Mr. Ramzan Kadyrov, in July of 2009.

962. On 6 October 2009, the Tverskoy District Court of Moscow found Mr. Orlov guilty of libel, following the publication of a statement in which Mr. Orlov indicated his belief that Mr. Kadyrov or his administration was responsible for the murder of Ms. Natalia Estemirova, the head of Memorial's office in Grozny, on 15 July 2009. Mr. Kadyrov subsequently lodged an administrative complaint against Mr. Orlov, claiming that the statement had damaged the "honour and dignity" of the President of the Chechen Republic, and demanding ten million rubles in damages. Having been found guilty, it is reported that Mr. Orlov was ordered to retract the statement and pay a personal fine of 20,000 rubles. Memorial was also ordered to pay a fine of 50,000 rubles. The sentence was upheld on appeal by Moscow City Court on 21 January 2010.

963. Furthermore, a criminal investigation concerning the same comments was opened on 20 October 2010. Despite reports that Mr. Kadyrov had publicly stated on 9 February 2010 that he would dismiss the criminal proceedings, on 18 June 2010, Mr. Orlov was informed that the charges against him remained pending, and summoned to appear before the Investigatory Department of the Department of Internal Affairs of the Central Administrative District of the City of Moscow on 6 July 2010 for further investigation. Mr. Orlov was subsequently charged with the criminal offence of libel under Article 29 parts 2 and 3 of the Criminal Code of the Russian Federation, and subjected to questioning.

964. In the subsequent trial hearing of 13 September 2010, serious concerns were reportedly expressed regarding criminal procedure, specifically with respect to Article 72 of the Russian Federation's Code of Criminal Procedure, as it was alleged that Mr. Kadyrov's lawyer had been interrogated as a witness during pre-trial investigation. Citing these concerns and others, on 22 October 2010, the European Parliament called upon the authorities of the Russian Federation to reconsider the decision to open the criminal trial.

965. In the trial hearing of 25 November 2010, which took place before District Court No. 363 of Khamovniki district, Moscow, the first defence witnesses were examined. The next hearing is reported to be scheduled for 16 December 2010.

966. Concern was expressed that the ongoing criminal proceedings against Mr. Oleg Orlov may be related to legitimate and peaceful work in defence of human rights, in particular his remarks made about the President, as well as that of the human rights organisation Memorial. These acts, if confirmed, would take place in a context of increasing harassment of and violence against human rights defenders in the Russian Federation.

#### **Communication received**

967. In a letter dated 21 February 2011, the Government provided a response to the above-mentioned communication. On 13 August 2009, the Tverskoy District Court of the City of Moscow began its examination of a complaint by Mr. Ramzan Akhmatovich Kadyrov, President of the Chechen Republic, against the interregional non-governmental organization and human rights centre Memorial and the chair of its board, Mr. Oleg Petrovich Orlov, in which Mr. Kadyrov claimed that his honour, dignity and reputation had been damaged, demanding 5 million roubles from each of the respondents in compensation

for moral harm and the retraction of the libellous statements made against him in the mass media.

968. The Court's decision of 6 October 2009 gave partial satisfaction to those demands. Thus, Mr. Kadyrov's claim was partially satisfied. The Court decided:

- To accept that the statements made on the website [www.memo.ru](http://www.memo.ru) were false and damaging to the honour, dignity and reputation of Mr. R.A. Kadyrov;
- To order Memorial to publish a retraction of the statements made on the aforementioned website within 10 days of entry of the Court's decision into force;
- To order Memorial to pay Mr. R.A. Kadyrov 50,000 roubles in compensation for moral harm;
- To order Mr. O.P. Orlov, Chair of the board of Memorial, to pay Mr. R.A. Kadyrov 20,000 roubles in compensation for moral harm.

969. The dispute was settled by the court in accordance with civil procedure. On 21 January 2010, the civil chamber of Moscow City Court upheld the decision. As the result of a pretrial investigation, criminal proceedings were initiated against Mr. Orlov for the offence of libel on 20 October 2009. Mr. Orlov was charged with that offence under article 129, paragraph 3, of the Criminal Code (the case consequently being subject to a public hearing).

970. The charges against Mr. Orlov are that, as Chair of Memorial, he accused Mr. Kadyrov, President of the Chechen Republic, of the murder of Ms. N. K. Estemirova, Mr. Orlov's colleague at Memorial, and in so doing disseminated information that he knew to be false and that was damaging to the honour, dignity and reputation of Mr. Kadyrov.

971. On 28 July 2010, the deputy prosecutor for the Central Administrative District of the City of Moscow confirmed the indictment and the case was referred to the court. The injured party, Mr. Kadyrov, maintained the charges against Mr. Orlov.

972. On 12 August 2010, the criminal case against Mr. Orlov came before a justice of the peace of District Court No. 363 of the Khamovniki District of the city of Moscow for trial on the merits.

973. On 17 August 2010, the justice of the peace issued a decision to schedule the trial hearing for 30 August 2010.

974. On 30 August 2010, the trial hearing was adjourned until 13 September 2010 as a result of the failure of Mr. Orlov to appear.

975. On 13 September 2010 (not 13 October 2010, as indicated in the appeal of the Special Rapporteurs), in accordance with article 72 of the Code of Criminal Procedure, lawyer Mr. G.M. Reznik filed an objection against the injured party's representative, Mr. A.A. Krasnenkov, in connection with the latter's having been questioned as a witness during the pretrial inquiry, purportedly "in accordance with the procedure for questioning a witness". The justice of the peace dismissed the objection on the grounds that during the pretrial investigation, Mr. Krasnenkov had been questioned not as a witness but as a representative of the injured party.

976. In accordance with article 42 of the Code of Criminal Procedure, the injured party and his or her representative may be questioned both during the pretrial investigation and during the trial.

977. During the trial hearing, witnesses Ms. A.A. Malsagova, Mr. U.S. Dzhumaliev and Mr. O.D. Dzubairaeve were questioned. The trial was adjourned until 27 September 2010 so

that witnesses who had failed to appear and the injured party could be summoned and questioned.

978. During the trial hearing on 27 September 2010, witness Ms. T.A. Kagyarova was questioned. Mr. Krasnenkov, representative of the injured party, filed a request for the court to order an additional linguistic examination. The defendant, Mr. Orlov, and his lawyer, Mr. Reznik, raised an objection to the requested examination. Ms. T.V. Popova, assistant prosecutor, requested time to prepare for the submission of the findings. The trial was adjourned until 14 October 2010.

979. During the trial hearing on 14 October 2010, witnesses Mr. S.K. Komkov, Mr. I.K. Dadalaev and Mr. N.S. Nukhazhiev were questioned. The trial was adjourned until 2 November 2010 so that witnesses who had failed to appear could be summoned and questioned.

980. During the resumed proceedings on 2 November 2010, written materials relating to the case were examined. The trial was adjourned until 25 November 2010 so that witnesses who had failed to appear and the injured party could be summoned and questioned.

#### **Comments and observations of the Special Rapporteur**

981. The Special Rapporteur thanks the Government of the Russian Federation for the response provided to the communication dated 3 December 2010. She appreciates the detailed information provided on the criminal proceedings initiated against Mr. Oleg Orlov and would appreciate receiving updated information on the conduct and outcome of the trial.

#### **Communication sent**

982. On 20 December 2010, the Special Rapporteur sent an allegation letter regarding the **patterns of intimidation, acts of violence against lawyers and acts of interference in the professional discharge of their functions.**

983. Over the past six months, there have been reports of acts of interference and violence against lawyers allegedly being perpetrated by law enforcement forces and security officials in the North Caucasus region. Lawyers who are known for defending human rights cases are said to be targeted.

984. On 29 October 2010, lawyers issued a statement alleging that members of the Kyzyl'yurt district police department (OVD) have been interfering in the discharge of their professional functions through acts of violence and for refusing to prosecute those responsible. On 1 November 2010, lawyers from the city of Kyzyl'yurt and the surrounding district of Dagestan began a strike in protest against the conduct of law enforcement and security officials. It is alleged that the lawyers are refusing to participate in investigations and court cases the authorities address inter alia the provision of safe working conditions, the implementation of preventative measures against interference by security service members in the lawyers' work, and the opening of investigations into five separate instances of illegal conduct towards lawyers by OVD members in 2010. The Special Rapporteur informed that the lawyers from Kyzyl'yurt district have submitted a complaint to the Republic's Lawyers Council proposing a general strike.

985. The Special Rapporteur is informed that these acts of violence and intimidation have also been reported in other parts of the North Caucasus region and allegedly about five lawyers have been assaulted in recent months.

986. The Special Rapporteur has received information on the following incidents:

987. In April 2010, **Mr. Sergei Kvasov**, a lawyer in Dagestan, was assaulted and beaten by four persons wearing a mask in the centre of the city of Makhachkala. It is reported that the perpetrators of the acts continued to beat him, even after he had lost consciousness. He was brought to the hospital and suffered from severe injuries and contusions. He remained unconscious during several hours.

988. On 7 October 2010, **Ms. Zinfira Mirzaeva**, a lawyer in the Kumtorkalinsky district of Dagestan, was forcibly and illegally detained by two local police officers while taking pictures to collect evidence on the scene of an alleged case of theft involving her client, the person accused. The security personnel reportedly attempted to produce evidence that she was conspiring with militants. Some colleagues of Ms. Mirzaeva demanded her release from custody at the police station, which they eventually obtained.

### **Communication received**

989. In a letter 21 February 2011, the Government has responded to the above-mentioned communication.

990. On 9 April 2010, an investigator working for the investigating agency of the police department for the Sovetsky District of the city of Makhachkala, Republic of Dagestan, initiated criminal proceedings under article 111 (intentional infliction of serious injury), paragraph 3 (a), and article 213 (criminal mischief), paragraph 2, of the Criminal Code of the Russian Federation on the basis of evidence that bodily injury had been inflicted on the lawyer Mr. S.V. Kvasov.

991. As a result of the investigative activities carried out, it was established that on the evening of 9 April 2010, unidentified persons forcibly entered the Mario cosmetic salon, where Mr. Kvasov was located at the time, and attacked him with baseball bats and metal bars, inflicting serious bodily injury. That same day, the victim was taken to the local hospital, where he was found to have a fractured skull and a broken left kneecap.

992. The main line of inquiry being pursued is that the attack was linked to Mr. Kvasov's professional activities. A series of investigative activities are being carried out to establish the identities of the perpetrators of the offence.

993. During an inquiry carried out by the investigating agency of the investigation department for the Republic of Dagestan, a unit of the Investigative Committee attached to the Office of the Procurator-General of the Russian Federation, in response to a complaint by lawyers Ms. P.A. Abdulsalamova and Ms. I.M. Gadzhieva that their colleague Ms. Z.M. Mirzaeva had been attacked and beaten, the following was established.

994. On 7 October 2010, in the village of Uchkekent, Kumtorkalinsky District, Republic of Dagestan, Ms. Mirzaeva, a lawyer of the interdistrict Bar Association, took video footage of investigative activities carried out by law enforcement officers in connection with the theft by her client, Mr. R.S. G., of livestock belonging to the mother of Mr. A.M. Z., head of the department of the Ministry of the Interior of the Republic of Dagestan responsible for combating offences relating to the trade in water bioresources. She also attempted to record images of Mr. Z.'s home on her video camera, despite being requested by Mr. Ziyavutdinov not to take photographs of his private property. Following Ms. Mirzaeva's refusal to refrain from doing so, Mr. Z. took Ms. Mirzaeva to the Kumtorkalinsky district police department by force.

995. Consequently, criminal proceedings were initiated against Mr. Z. on 4 November 2011 on the basis of evidence of an offence under article 330 (Vigilantism), paragraph 2, of the Criminal Code of the Russian Federation.

996. On 23 November 2010, the Kumtorkalinsky district court ruled that the decision to prosecute was unlawful. However, on 17 January 2011, the Criminal Chamber of the

Supreme Court of the Republic of Dagestan, having considered an appeal by the prosecutor for the Kumtorkalinsky District, overturned that ruling and ordered the retrial of the case.

997. An inquiry conducted by the Office of the Procurator-General of the Russian Federation found no evidence in support of the information set out in the enquiry of the Special Rapporteur regarding the strike supposedly planned by lawyers of the town of Kizilyurt and the Kizilyurt District, nor regarding the refusal by those lawyers to participate as defence lawyers in the investigation of criminal cases. Moreover, the Kizilyurt interdistrict procurator held a meeting with the participation of lawyers and heads of district law enforcement agencies as a result of which the head of the Kizilyurt police department was tasked with organizing measures to ensure the safety of lawyers in exercising their professional duties and to prevent attempts to obstruct them in their work.

#### **Comments and observations of the Special Rapporteur**

998. The Special Rapporteur thanks the Government for the response to the communication dated 20 December 2010. In respect of the assault of Mr. Kvasov, the Special Rapporteur welcomes the information that investigations are being carried out to establish the identities of the perpetrators of the offence. She would appreciate receiving updated information on the result of the investigations.

999. Concerning the case of Ms. Zinfira Mirzaeva, the Special Rapporteur thanks the Government for the information provided. She would appreciate receiving information on the retrial of Mr. Z's case as well as information.

1000. Lastly, the Special Rapporteur welcomes the information provided by the Government according to which an inquiry was carried out regarding the pattern of intimidation of lawyers, a meeting was held with the participation of lawyers and law enforcement officials, and welcomes that the head of the Kizilyurt police department was requested to take measures to guarantee the safety of lawyers and prevent interference in the discharge of their professional duties.

#### **Communication sent**

1001. On 23 December 2010, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders sent an urgent appeal concerning the case of ill-treatment by officers of the Khasavyurt Police Station of **Ms. Sapiyat Magomedova**, human rights lawyer in the Republic of Dagestan and the interference in the discharge of her professional functions.

1002. This case has previously been addressed in an urgent appeal sent by the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 23 June 2010, as well as in a second urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 29 October 2010.

1003. In response to the first communication dated 13 August 2010, your Excellency's Government has informed us that the allegations made by Ms. Magomedova's lawyer have been verified by the Bureau of Investigation reporting to the Federal Procurator's Office in Dagestan. As a result, criminal proceedings were instituted on 1 July 2010, under article 286, paragraph 3 (a), of the Criminal Code (improper exercise of authority) and that the investigative work was being conducted.

1004. In the previous communication dated 29 October 2010, the Special Rapporteurs drew the attention of your Excellency's Government to our concerns regarding inter alia the conduct of the criminal investigations. It had been brought to our attention that a number of fundamental procedural rules and safeguards had been violated including the fabrication of false evidence. It had also been reported that a criminal case was launched against Ms. Magomedova on charges of "public insult of state official while on duty". It was further claimed that if convicted, she would be stripped of her licence to practice law. We are yet to receive information on the current status of prosecution and on the measures taken to safeguard Ms. Magomedova's rights and security as well as that of her family.

1005. According to the new information received, there is lack of progress in the criminal investigations regarding the alleged assault of Ms. Sapiyat Magomedova at Khasavyurt Police Station (SOG PPSM OVD) on 17 June 2010, whereas the criminal investigation against Ms. Magomedova for alleged "public insult of a State official while on duty" continues.

1006. Ms. Magomedova has allegedly been informed that the term of the preliminary investigation into the criminal case against her has been extended until 2 January 2011. Ms. Magomedova appealed against the initiation of the criminal case pursuant to article 125 of the Criminal Procedure Code

1007. It is reported that the criminal charges against Ms. Magomedova is based on allegations of her having insulted the chief of the Khasavyurt Police Station (SOG PPSM OVD) when visiting one of her clients on the 17 June 2010, on the basis of article 319 of the Criminal Code, as referred to in the aforementioned communications. On that day, she was allegedly severely beaten by the officers of the Khasavyurt Police Station. It is further reported that the questioning of two witnesses, both police officers from the same police station, constitutes the main element of evidence to support the criminal case against her.

1008. With regard to the alleged assault against her, Ms. Magomedova has filed a complaint against the investigative body on 29 November 2010. She alleged that fundamental procedural rules and safeguards had not been observed including, inter alia, that the criminal case had been initiated with an undue delay of 13 days, that her requests for information on the proceedings had not been considered and that the questioning of suspects had been delayed. She further alleged that for almost five months – 1 July to 29 November 2010 – the investigator had failed to identify the perpetrators of the acts of violence against her.

1009. Concern is raised that the criminal investigations has been deliberately delayed in relation to the alleged assault of Ms. Magomedova and that she may be targeted for her legitimate activities as a human rights lawyer.

#### **Communication received**

1010. In a letter dated 29 March 2011, the Government responded to the above-mentioned communication.

#### **Comments and observations of the Special Rapporteur:**

1011. The Special Rapporteur thanks the Government for its response. She regrets that at the time of finalizing the present report, the response had not been translated. Therefore, it will only be reflected in the next year's report.

#### **Communication sent**

1012. On 14 January 2011, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of

human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an allegation letter regarding the **pattern of impunity regarding the deaths of lawyers and human rights activists including impunity concerning the death of Mr. Sergei Magnitsky**, a lawyer who died in custody on 16 November 2009.

1013. According to information received, Mr. Magnitsky was counsel for a foreign investment firm known as Hermitage Capital Management. In 2008, Mr. Magnitsky voluntarily provided testimony accusing the Russian Interior Ministry and other state officials of stealing about 230 million US dollars from the State budget. It was alleged that this was part of a complex fraud involving the transfer of title of several Hermitage companies and successfully applying for a tax reimbursement of 230 million US dollars, a figure which represented the amount of taxes previously paid by the Hermitage companies to the Russian Federation.

1014. On 24 November 2008, Mr. Magnitsky was arrested and charged with tax evasion. He was never brought before a court of law but was kept in pre-trial detention for 11 months. His lawyers repeatedly filed complaints on the arbitrariness of his detention, however these were rejected. It is alleged that while in custody he developed pancreatitis and he was denied medical treatment despite repeated requests. On 16 November 2009, he died in custody.

1015. On 17 November 2009, an autopsy was conducted and it indicated that he had died from heart failure. It is alleged that a medical examination conducted on 11 November 2009, indicated that he had gallstones and cholecystitis pancreatitis at an acute stage, but that and after carrying out an electrocardiogram, his health was satisfactory. Mr. Magnitsky's family requested that an independent autopsy be conducted. However this was denied and his body was released to the family on condition that he would be buried immediately.

1016. In December 2009, about 20 members of Russia's penitentiary services were dismissed by the federal Government although it is not clear whether this was in connection with the death of Mr. Magnitsky. The Russian State Investigative Committee announced that there would be a formal criminal investigation into his death. To date no person has been prosecuted for the death in custody of Mr. Magnitsky.

#### **Communication received**

1017. At the time this report was finalized, no response to this communication had been received.

#### **Concluding comments and observations of the Special Rapporteur**

1018. The Special Rapporteur thanks the Government of the Russian Federation for providing a response to the communications dated 23 June 2010 and 3, 29 and 23 December 2010. She regrets the absence of a response to the communication dated 14 January 2011.

1019. She wishes to express concern about the number of allegations received indicating a pattern of intimidation, harassment and interference in the discharge of professional functions of lawyers. The Special Rapporteur wishes to reiterate the need to guarantee the right of lawyers to freely represent their clients and perform their professional activity without fear, intimidation and interference. In this respect, the Special Rapporteur would like to stress once again the importance for Governments to respect and take into account the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27



August to 7 September 1990, aimed at assisting Member States to protect and ensure the proper role of lawyers.

## **Saudi Arabia**

### **Communication sent**

1020. On 30 June 2010, the Special Rapporteur, jointly with the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning regarding the detention and health deterioration of **Mr. Nacer Naïf Al Hajiri**, Kuwaiti national who normally resides with his wife and 3 children at Manteqat Al Qusur (Kuwait) and who was working as a civil servant in the Kuwaiti Administration.

1021. Mr. Al Hajiri was arrested on 16 December 2007, by the General Saudi Intelligence Services (Al Mabahit Al Aama) at the Khafdji border between Kuwait and Saudi Arabia. He was allegedly arrested without a warrant and taken to an unknown location.

1022. Five months after his arrest, in May 2008, the wife of Mr. Al Hajiri was authorized to see him at the Intelligence Services' detention centre in Damman (Eastern Saudi Arabia). Mr. Al Hajiri reportedly informed his wife that during this time he was not charged, nor given a reason for his arrest, he had not been presented before a judge, nor had he been allowed to access a lawyer. To date, no charges have been reportedly brought against Mr. Al Hajiri, nor has he had access to legal counsel.

1023. According to the reports received, Mr. Al Hajiri's health started deteriorating after his arrest as he suffers from diabetes and arterial hypertension. In March 2009, Mr. Al Hajiri undertook a hunger strike in protest against his detention.

1024. In addition, Mr. Al Hajiri is currently suffering from a brain tumour which, according to a medical exam held in August 2009, requires an urgent operation to extract the tumour. On 28 February 2010, Mr. Al Hajiri was reportedly taken to a hospital and examined by a doctor who advised immediate medical intervention, including specialized exams. However, despite the worsening of his physical condition, the prison authorities refused the medical advice and he was returned to his cell. Mr. Al Hajiri remains in detention.

1025. Serious concern is expressed about the physical and mental integrity of Mr. Al Hajiri. Concern is expressed about allegations that, despite the degradation of Mr. Al Hajiri's health, the prison authorities have reportedly refused that he obtains the necessary medical care as repeatedly advised by doctors. Further concern is expressed about reports that Mr. Al Hajiri was held incommunicado in an unknown location for a period of five months without access to a lawyer or contact with his family. Concern is also expressed about allegations that no charges have been brought against Mr. Al Hajiri and that he has not had access to legal counsel since the time of his arrest.

### **Communication received**

1026. At the time this report was finalized, no response to this communication had been received.

### **Comments and observations of the Special Rapporteur**

1027. The Special Rapporteur regrets the absence of an official response to the communication dated 30 June 2010. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of the

Kingdom of Saudi Arabia to transmit responses to the concerns raised in the above-mentioned communication.

## Senegal

### Communication envoyée

1028. Le 28 janvier 2011, la Rapporteuse spéciale, conjointement avec le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, a envoyé un appel urgent concernant le cas de **M. Hissène Habré**, ancien Chef d'Etat de la République du Tchad. Le cas de M. Habré a été examiné par le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants dans son rapport de 2007 (voir A/HRC/4/33, paras. 43-47) ainsi que par le Comité des Nations Unies contre la Torture dans sa *communication No. 181/2001-CAT/C/36/D/181/2001, Suleymane Guengueng et autres c/ Sénégal*, du 17 mai 2006. Dans ladite communication, le Comité contre la torture a considéré que le Sénégal n'avait pas rempli ses obligations en vertu de l'article 5 paragraphe 2, et de l'article 7 de la Convention contre la Torture et autres peines ou traitements cruels, inhumains ou dégradants. M. Habré est accusé d'avoir systématiquement pratiqué la torture durant ses huit années passées à la tête de l'Etat de la République du Tchad.

1029. En février 2000, M. Habré a été inculpé sur la base des charges de torture au Sénégal, mais les tribunaux sénégalais ont estimé qu'ils ne pouvaient pas juger M. Habré au Sénégal pour les crimes commis à l'étranger car la législation interne n'établit pas leur compétence à l'égard de tels crimes. Le Sénégal aurait demandé à l'Union Africaine d'indiquer la juridiction compétente afin de juger M. Habré.

1030. En juillet 2006, l'Union Africaine a demandé au Gouvernement du Sénégal de poursuivre M. Habré et d'assurer son jugement par un tribunal sénégalais compétent. Le Gouvernement du Sénégal aurait modifié la Constitution en vue de permettre les poursuites contre M. Habré.

1031. M. Habré fait également l'objet d'un acte d'accusation et d'une demande d'extradition datant de 2005 émise par la justice juge belge à la suite de plaintes déposées par des victimes qui auraient été torturées par l'ex-président du Tchad.

1032. Le 18 novembre 2010, la Cour de Justice de la Communauté Economique des Etats de l'Afrique de l'Ouest (CEDEAO) a décidé que le Sénégal pouvait seulement juger M. Habré en créant une juridiction spéciale. La Cour a conclu que l'obligation de mettre fin à l'impunité de M. Habré devait être remplie « selon la coutume internationale qui a pris l'habitude, dans de telles situations, de créer des juridictions ad hoc ou spéciales ».

1033. Dans une interview avec RFI/France 24, le 9 décembre 2010, Son Excellence Monsieur Abdoulaye Wade, Président du Sénégal aurait annoncé qu'il souhaiterait transmettre le cas de M. Hissène Habré à l'Union Africaine et qu'il annoncerait ceci officiellement pendant la prochaine session du sommet de l'Union Africaine.

1034. À la suite de l'interview, le Président Wade aurait annoncé pendant la réunion du Conseil des Ministres que la Cour de la CEDEAO « a décidé que le Sénégal ne pouvait pas juger l'ancien président tchadien ». Le Président aurait donc décidé de donner suite à ce jugement en transmettant le cas de Habré à l'Union Africaine.

1035. Des craintes sont exprimées quant au délai injustifié pour engager des poursuites contre M. Habré pour les allégations de torture systématique pendant ses huit ans à la tête du Tchad et l'impact négatif sur l'impunité.

**Communication reçue**

1036. Aucune réponse n'a été reçue à ce jour.

**Commentaires and observations de la Rapporteuse spéciale**

1037. La Rapporteuse spéciale regrette, au moment de la finalisation du présent rapport, l'absence de réponse à la communication en date du 28 janvier 2011. Elle considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Elle exhorte le Gouvernement sénégalien à répondre au plus vite à cette communication.

**Serbia****Communication sent**

1038. On 23 September 2010, the Special Rapporteur sent an allegation letter regarding the **non-election of about 837 judges after involution of the Law on Judges.**

1039. The predecessor of the Special Rapporteur had previously written to the Government of Serbia in a communication dated 5 November 2008, in which concern was raised on the requirement of re-election for sitting judges and on the procedures governing the membership of the High Judicial Council. The Government replied in a communication dated 22 January 2009. The Special Rapporteur appreciates the response from the Government in which the justification for the process of judicial renewal was provided and it was indicated that the absence of lustration has led towards accumulation of systematic problems and an outstanding lack of functionality which has characterised the judicial system. Further, the Special Rapporteur appreciates information from the Government concerning the process of judicial and legislative reform being undertaken.

1040. The Special Rapporteur welcomes the process of judicial reform being undertaken by the Government. However, the Special Rapporteur would like to stress that renewing the judicial system has to comply with international standards safeguarding the independence of the judiciary. In this regard, the Special Rapporteur would like to bring to the attention of the Government information that she has recently received which raise concern on the process of re-election of the judges.

1041. According to information received, the Law on Judges which was published in the Official Gazette of the Republic of Serbia, No. 116/08 of 27 December 2008, provides under article 100 that "The High Judicial Council shall make a decision on the number of judges and lay judges in accordance with this Law, within 30 days after the date of the election of the first constitution of the High Judicial Council, having obtained the consent of the Minister in charge of the judiciary. The election of judges, in accordance with this Law, shall be conducted no later than December 1, 2009, with the exception of judges of the Supreme Court of Cassation who shall be elected within 90 days after the date of the first constitution of the High Judicial Council. The judges elected in accordance with this Law shall take up office on January 1, 2010."

1042. The criteria for the re-election was said to be in accordance with article 45 on the Law on Judges which stipulates that "Other requirements for the election of a judge are qualification, competence and worthiness, Qualification means possessing theoretical and practical knowledge necessary for performing the judicial function. Competence means possessing skills that enable efficient use of specific legal knowledge in dealing with cases. Worthiness means ethical characteristics that a judge should possess and conduct in accordance with such characteristics. The moral characteristics of a judge shall include honesty, thoroughness, diligence, fairness, dignity, perseverance, and esteem, and conduct

in compliance with these characteristics involves upholding of signity of a judge on an off duty; the awareness of social responsibility; preserving of independence and impartiality; reliability and dignity on duty and off, as well as taking the responsibility for the internal organization and a positive public image of the judiciary. The criteria and standards for the assessment of qualification, competence and moral character are set by the High Judicial Council, in accordance with the law”.

1043. The process of deciding which judges qualify for election was not transparent as the High Judicial Council worked in closed sessions. The Special Rapporteur is informed that the Council on 5 June 2009, adopted the “Internal Rules on the Work of the High Judicial Council” which stipulates inter alia that the sessions of the Council are closed to the public, that the members of the Council are obliged to keep the secrecy of the data which the Council marked as secret and not to disclose information regarding decision making of the Council. In line with these rules the application of the criteria as stipulated under Article 45 on the Law on Judges was not made public and no individualized reasons were given to the judges on why they were not re-elected into office.

1044. On 17 December 2009, the High Judicial Council published in a list of re-elected judges with the names of 1,531 judges that would perform judicial functions in the higher courts, the Supreme Cassation and Appellate Courts and 876 that would be elected by the Assembly of Serbia. 46 seats remained vacant.

1045. In January 2010, about 820 judges who were not re-elected submitted appeals to the Constitutional Court against the decision of the High Judicial Council to terminate their tenure of office as of 31 December 2010. The appeals contend that the Constitutional Court should approve a provisional measure and postpone the execution of the decision of the High Judicial Council in the part which terminated the permanent judging function of non-elected judges. Further, they called that the Constitutional Court should postpone the new election of judges and direct the High Judicial Council not to issue new announcements for the election of judges.

1046. On 27 May 2010, the Constitutional Court delivered a decision in the appeal by Mr. Zoran Saveljic in which it held that the High Judicial Council had to give individualized reasons for the non re-election of the judge. On 5 July 2010, the High Judicial Council invited Mr. Zoran Saveljic to a meeting where they indicated the reasons why he had not been re-appointed. Mr. Zoran Saveljic did not have an opportunity to reply to the allegations raised against him. On the same day, he received a decision from the High Judicial Council informing him why he had not been re-appointed. Mr. Zoran Saveljic has appealed against the decision to the Constitutional Court. To date, the Constitutional Court is yet to deliver its rulings on the appeals by the other non-elected judges.

1047. The Special Rapporteur is informed that since June 2010, the High Judicial Council has started to deliver individual decisions on the termination of services for the non-elected judges to replace the circular decision of 17 December 2009. So far 30 individualized decisions have been issued.

1048. The non-elected judges had up to 30 June 2010, within which to effectuate the compensation of salary in accordance with article 101 of the Law on Judges which provides that “Duties of judges from article 99, paragraphs 1 and 2 of this Law, who were not elected under this Law, shall be terminated on the day when judges elected in accordance with this Law take up office. The judges from paragraph 1 of this article are entitled to compensation of salary for six months in the amount of salary they had at the moment of termination of their duties. The right to compensation of salary from paragraph 2 hereof shall be terminated prior to the expiration of the six month period of the judge whose duty was terminated obtains an employment status or right to a pension, and can be extended for another six months if he/she will obtain the right to a pension during those six months”.

**Communication received**

1049. At the time this report was finalized, no response to this communication has been received.

**Comments and observations of the Special Rapporteur:**

1050. The Special Rapporteur regrets the absence of an official response to the communication dated 23 September 2010. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of Serbia to transmit responses to the concerns raised in the above-mentioned communication.

**Sri Lanka****Communication sent**

1051. On 13 October 2010, the Special Rapporteur on the independence on judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an allegation letter concerning the **deaths in custody of Mr. Dhammala Arachchige Lakshman, Mr. Amarasinghe Arachchige David, Mr. Appuhandhi Kotahewage Nayanajith Prasanna, Mr. Jayakody Arachchilage Oman Perera and Mr. Jayasekara Arachchige Roshan Jayasekara.**

1052. The Special Rapporteurs are informed that there is a pattern of police officers killing detained suspects as a means of eliminating organized crime. Such cases are not being investigated or prosecuted before the courts.

1053. On 13 August 2010, Mr. Amarasinghe Arachchige David was arrested by officers from the Kirindiwela Police Station. He was placed into a police vehicle and on their way to the police station, the vehicle stopped along the main road at Papiliyawala to conduct a search on two people. Mr. David got out of the vehicle and watched the police officers conduct the search. The police officers, after noting that Mr. David had stepped out of the vehicle, approached him and beat him on his back and hip areas. He was then dragged towards the vehicle where the officers beat him against the rear door shouting "Are you trying to escape from us". Mr. David was taken to Kirindiwela Police Station and later admitted at the Government hospital of Radawana. He was transferred to the National Hospital of Colombo; however he later died from the injuries sustained. On 15 August 2010, a post-mortem examination indicated that he had died as a result of head injuries. It is alleged that the police are reluctant to conduct an investigation into the death.

1054. On 25 August 2010, Mr. Jayasekara, of Ranaviru Niwasa, Morakatiara, Beliattha was arrested by the Ragama Police Station and taken to Kiribathgoda police station. He was arrested on suspicion of having stolen a mobile phone at Ragama Railway Station. On 26 August 2010, a police officer brought the body of Mr. Jayasekara to Ragama Teaching hospital; however he did not wish to be registered as the person who brought in the body. On 27 August 2010, the police constable of the Kiribathgoda Police Station registered as the person who delivered the body. A post mortem that was conducted by the judicial medical officer at the Ragama Teaching Hospital revealed marks of numerous blunt force trauma injuries.

1055. On 31 August 2010, Mr. Jayakody Arachchilage Oman Perera of No. 22, Palle Kalley Janapadaya in Kurunegala was arrested by officers from the Special Task Force. After his arrest Mr. Perera was placed in a police jeep and as he was being driven to Colombo, he was shot. It is alleged that as the vehicle was near the Japalawatta Industrial Zone junction in Minuwangoda, Mr. Perera attempted to escape. He was taken to

Minuwangoda Hospital and later transferred to the Intensive Care Unit of the General Hospital, Gampaha. He died the same day from the injuries sustained.

1056. On 20 September 2010, Mr. Dhammala Arachchige Lakshman was arrested by the police and held in custody at the Hanwella police station. On 22 September 2010, he was taken to a location in Diddeniya in Hanwella for an on-sight investigation to uncover weapons. It is alleged that he attempted to escape from police custody by throwing a bomb at the police officers and was shot. He sustained injuries and died at the Avissawella hospital the same day. During his detention the deceased was not brought before a court.

1057. On 22 September 2010, Mr. Prasanna of No. 1B, Balawinnagama, Balawinna, Balapatha was arrested by the police officers from the Moratuwa Police Station. On 25 September 2010, he was found in his cell with severe cuts to his abdomen and was admitted at the Kalubowila Teaching Hospital. On 26 September 2010, he died from the injuries sustained. The police indicated that he had attempted to commit suicide with a shard of glass found inside his cell. During his detention he was not brought before a Magistrate as required by the Code of Criminal Procedure No.15 of 1979.

1058. The Special Rapporteurs are informed that in the recent past, the police have increasingly been arresting people without producing them before a court of law in contravention of the Code of Criminal Procedure No.15 of 1979 which stipulates that police officers should produce a suspect arrested on suspicion of committing a crime before a Magistrate within 24 hours. "Any police officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate."

#### **Communication received**

1059. At the time this report was finalized, no response to this communication has been received.

#### **Communication sent**

1060. On 19 November 2010, the Special Rapporteur on the independence of judges and lawyers and the Chair-Rapporteur of the Working Group on Arbitrary Detention sent an urgent appeal regarding the **administrative detention of about 8,000 persons alleged to be associated with the Liberation Tigers of Tamil Eelam (LTTE) suspects.**

1061. According to information received, after hostilities ceased between the Sri Lanka Army and the LTTE in mid May 2009, it is alleged that about 12,000 individuals were detained. Since October 2010, some detainees were released under Emergency Regulation 1580/5 of 15 December 2008, including at least 565 children. By March 2010, other detainees were released including detainees with disabilities or injured. About 1,158 people were released in April 2010 prior to parliamentary elections and about 140 university students were released to pursue their studies under the supervision of the Commissioner General for Rehabilitation.

1062. By July 2010, is alleged that that about 8000 individuals were still being held in "rehabilitation" centres for alleged links with the LTTE. Some of those detained have been designated to face criminal prosecution. Nevertheless we are informed that the detainees have not been informed of the reasons for their detention nor the length of the detention.

1063. The experts are informed that there are two basis for administrative detention under Sri Lankan regulations (i) preventive detention on the basis of security threats and (ii) compulsory participation in 'rehabilitation'. These powers are found in temporary Emergency Regulations (ER 2005 and 2006) - that lapse with the end of a state of

emergency - and in the more permanent counter-terrorism statute, the Prevention of Terrorism Act (PTA) (1979).

1064. The ER 2005, Regulation 19 provides that “(1) Where the Secretary to the Ministry of Defense is of the opinion with respect to any person that, with a view to preventing such person — (a) from acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services; or (b) from acting in any manner contrary to any of the provisions of regulation 25 of these regulations, it is necessary so to do, the Secretary may order that such person be taken into custody and detained in custody. Provided however that no person shall be detained upon an order under this paragraph for a period exceeding one year.” Regulation 19 was amended in May 2010, and reduced the maximum period of detention to three months. However its application is not retroactive meaning that the 8000 detainees, who are the subject of this communication, are excluded from this provision.

1065. The experts are informed that the detainees are held under administrative detention for the purposes of preventive detention and rehabilitation purposes. Some of those under detention are designated as “surrendee’s” which is defined under ER 2005 (regulation 22, as amended by Regulation No. 1462/8, 12 September 2006) as any person who surrenders to the authorities in connection with a wide range of offences, including firearms and explosives offences, offences under the PTA, certain offences under the Penal Code, or “under any emergency regulation”. ‘Surrender’ is not specifically defined with reference to members of an armed group who surrender following hostilities.

1066. Under the law the designation of an individual as a ‘surrendee’ leads automatically to one year of detention, purportedly for ‘rehabilitation’ (regulation 22(6)). The period of administrative detention for rehabilitation can be extended for up to a total of two years, after which release is mandatory unless criminal charges are brought (regulation 22(10)). Administrative detention of a ‘rehabilitee’ may continue without judicial review or access to legal representation for up to two years. Before the expiry of two years of administrative detention, an individual can be criminally charged (regulation 22(12)). If convicted, sentencing by a judge can include a further period of rehabilitation or imprisonment (regulation 22(13)).

1067. In December 2009, the Attorney General’s office produced a document outlining a legal framework for the surrender, rehabilitation and reintegration of ex-combatants based on regulation 22 of ER 2005. However we are informed that this document is not legally binding.

1068. The experts are further informed of the proposal in October 2010, of an “Action Plan for the Reintegration of Ex-Combatants”, according to which a first stage would consist of three to 24 months of rehabilitation in a Protective Accommodation and Rehabilitation Centre (PARC). The period of rehabilitation would depend on the ex-combatants’ level of involvement with the LTTE and progress in rehabilitation. The second stage would be a period of community-based socio-economic reintegration. The Action Plan is yet to be approved by the cabinet. The establishment of the legal framework for implementing the Action Plan and processing the detainees, which is the responsibility of the Attorney General, remained incomplete.

1069. On 30 May 2000, the Government of Sri Lanka notified the United Nations Secretary General that it had made derogations to articles 9(2), 9(3), 12, 14(3), 17(1), 19(2), 21 and 22(1) of the ICCPR. On 9 June 2010, the Government informed the Secretary General that it had removed all derogations except to article 9(3).

1070. The experts note that in the notification to the United Nations Secretary General your Excellency’s Government indicated that “As a result of the successful security operations launched by the Government of Sri Lanka, this situation ended in mid-May

2009, with the elimination of the menace of terrorism posed by the ruthless organization styling itself the Liberation Tigers of Tamil Eelam (LTTE). However, there does remain a need for vigilance to ensure the complete recovery of arms caches secreted by the LTTE and the reintegration back into society of LTTE cadres, after successfully completing programmes of rehabilitation and of vocational training.” We would like to bring to the attention of your Excellency’s Government that international human rights law continues to apply to ex-combatants and in the treatment of suspects detained on grounds of national security and for the purposes of rehabilitation and reintegration.

#### **Communication received**

1071. At the time this report was finalized, no response to this communication has been received.

#### **Comments and observations of the Special Rapporteur:**

1072. The Special Rapporteur regrets the absence of response to the communications dated 13 October 2010 and 19 November 2010. She considers response to her communications as an important part of the cooperation with her mandate, and urges the Government of Sri Lanka to transmit responses to the concerns raised in the above-mentioned communications. Concerning the first communication, the Special Rapporteur would appreciate detailed information on any investigations and criminal proceedings carried out in relation to the deaths of the individuals named therein. In respect of the second communications, she reiterates her serious concern about the detention of thousands of persons alleged to be associated with LTTE allegedly with no possibility to accessing a lawyer and to challenge their detention. She stresses that any person arrested shall be promptly brought before a court and have access to a lawyer. The Special Rapporteur would greatly appreciate a response clarifying the situation of these detainees.

### **Sudan**

#### **Communication sent**

1073. On 23 November 2011, the Special Rapporteur, jointly with the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Independent Expert on the situation of human rights in the Sudan, sent an urgent appeal concerning **Mr. Abdelrahman Mohamed Al-Gasim**, Legal Aid and Training Coordinator of the Darfur Bar Association, and a member of the Executive Committee for the Sudanese Human Rights Monitor; **Mr. Abdelrahman Adam Abdallah** and **Mr. Derar Adam Abdallah**, Deputy Director and Administration Officer of the Sudan-based Human Rights and Advocacy Network for Democracy respectively; **Mr. Manal Mohamed Ahmed**, **Ms. Aisha Sardo Sherif**, **Ms. Aziza Ali Idris**, **Mr. Abu Gasim Al Din**, and **Mr. Zakaria Yacoub**, Darfuri human rights activists; and **Mr. Jaafar Alsabki Ibrahim**, a Darfuri editor working for the newspaper Al Sahafa in Khartoum.

1074. On 29 October 2010, Mr. Abdelrahman Mohamed Al-Gasim was reportedly arrested by members of the National Intelligence and Security Services (NISS) in Khartoum. On 31 October, NISS agents informed his family that he had been arrested, but did not specify the charges brought against him. Neither his lawyer, nor his family are allowed access to him. The whereabouts of Mr. Abdelrahman Mohamed Al-Gasim remain unknown as of today.

1075. It is further alleged that Mr. Abdelrahman Mohamed Al-Gasim received threats from Sudanese officials while participating in the 15th session of the Human Rights



Council in Geneva in September 2010. Mr. Abdelrahman Mohamed Al-Gasim lobbied for the extension of the mandate of the Independent Expert on the situation of human rights in the Sudan, and delivered a number of oral interventions before the Council on alleged human rights violations committed by the Sudanese authorities in the country. He was also a panelist in a side-event entitled “Sudan: Impunity, Repression and Conflict on the Rise”, co-sponsored by the non-Governmental human rights organizations Cairo Institute for Human Rights Studies (CIHRS), Amnesty International, Human Rights Watch, and the International Federation for Human Rights. Furthermore, Mr. Abdelrahman Mohamed Al-Gasim was scheduled to take part in the stakeholder's submission, co-sponsored by CIHRS and its partner organizations in the Sudan, on the Universal Periodic Review of the Sudan. Finally, Mr. Abdelrahman Mohamed Al-Gasim was due to attend the 48th session of the African Commission for Human and Peoples Rights in Banjul in November 2010.

1076. On 30 October, Mr. Abdelrahman Adam Abdallah, Mr. Derar Adam Abdallah, Mr. Manal Mohamed Ahmed, Ms. Aisha Sardo Sherif, Ms. Aziza Ali Idris, Mr. Abu Gasim Al Din, and Mr. Zakaria Yacoub were arrested by NISS agents, following the participation by some of them, in a youth forum hosted allegedly by a pro-democracy student movement called Girifna. During the forum, the issues of social development and the administration of justice in Darfur were discussed. Lawyers and families have reportedly been denied access to the detainees and their current fate and whereabouts are unknown.

1077. On 3 November 2010, Mr. Jaafar Alsabki Ibrahim was arrested by NISS agents at the premises of Al Sahafa in Khartoum. He was prevented from making a call to his family before being taken to an undisclosed location.

1078. Serious concerns are expressed that the arrest and detention of the nine aforementioned persons are linked to their legitimate activities in defence of human rights. In view of the fact that their fate and whereabouts are unknown, further concerns are expressed for their physical and psychological integrity.

#### **Communication received**

1079. At the time this report was finalized, no response to this communication has been received.

#### **Comments and observations of the Special Rapporteur:**

1080. The Special Rapporteur regrets the absence of an official response to the communication dated 23 November 2010. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of Sudan to transmit responses to the concerns raised in the above-mentioned communication.

*Translations of responses to communications sent during the reporting period covered in last year's report* (for ease of reference the communications sent are also reproduced below)

#### **Communication sent**

1081. On 10 February 2010, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions.

1082. On 11 August and 24 September 2008, the Special Rapporteur wrote to your Excellency's Government in relation to information received regarding the death sentences imposed by special Anti-Terrorism Courts in greater Khartoum against persons convicted on charges connected to the attack on Omdurman on 10 May 2008 led by the Justice and Equality Movement (JEM). The Special Rapporteurs would now like to follow up to those previous communications, which regrettably have remained without a response from your

Excellency's Government, with specific regard to the cases of defendants who allegedly were children at the time of the attack on Omdurman. In this context, we would also like to raise more general concerns regarding the continued imposition of the death penalty against children in Sudan.

1083. In our letter of 11 August 2008, the Special Rapporteur drew the attention of your Excellency's Government to the case of Mahmood Adam Zariba. At the trial, his defence counsel reportedly informed the court that he was aged 16 years at the time of the JEM attack. The counter terrorism court, however, reportedly did not grant a medical examination to determine his age. Mahmood Adam Zariba was sentenced to death on 31 July 2008 by Anti-Terrorism Court 4 in Omdurman, having been found guilty on a range of offences under the 1991 Criminal Act, the 1986 Arms, Ammunitions and Explosives Act and the 2001 Counter-Terrorism Act.

1084. On 31 July 2008, Anti-Terrorism Court 3 in Bahri (Khartoum North) sentenced to death two additional defendants charged in relation with the attacks on Omdurman who, according to statements they reportedly made to their defence counsel, were aged 17 at the time of the offence. Both Mohamed Hashim Ali Abdu and Ishag Yaseen Ali Adam (whose mother gave his age as 16) were found to be over the age of 18 according to the views of a police medical committee. Members of the committee testified that the determination of Mohamed Hashim Ali Abdu's age was based on the colour and number of his teeth; the committee testified that this methodology was also used in the case of Ishag Yaseen Ali Adam, as was an assessment of the deepness of his voice and an examination of his armpits for underarm hair. The court reportedly did not take into account doubt cast on the methodology of the medical committee during cross examination, and defence counsel were reportedly denied access to the prosecution's evidence submissions of the committee's findings.

1085. On 20 May 2009, Anti-Terrorism Court 3 in Bahri (Khartoum North) sentenced to death four additional defendants charged in relation with the attacks on Omdurman who, according to statements they reportedly made to their defence counsel, were aged 17 at the time of the offence. They are Abdelsalam Yahya Abdallah Adam, Mohamed Al Duma Yahya Abaker, Mohamed Al Taib Mustafa Al Sanousi, and Mansour Ibrahim Abaker Hashim. All four were found to be over the age of 18 according to the views of a police medical committee. Members of the committee testified in court that the defendants were not minors, but allegedly gave no details of the medical examinations conducted to allow them to reach this conclusion. Defence counsel challenged the adequacy of the medical examinations, but the court did not conduct any further inquiry. While the authorities have denied that any minors were sentenced to death in these trials, they have never produced court records nor medical certificates to show that adequate medical examinations had been conducted to assess the age of the above four defendants. The information received indicates that under Sudanese law neither the defence lawyers nor the interested public can demand disclosure of the court records in this respect.

1086. The case of Al Sadig Mohamed Jaber Al Dar Adam, raised in the communication of 24 September 2008, is different from those described above in that the Khartoum Anti-Terrorism Court which sentenced him to death on 17 August 2008, reportedly accepted his birth certificate, showing him to have been aged 17 at the time of the offence, as valid documentation of his age. The court, however, found him guilty of *hiraba*, or brigandage (Article 167 of the Sudanese Criminal Act), a *hudud* offence, and concluded that he could be sentenced to death in spite of his age. Article 27(2) of the Sudanese Criminal Act allows the death penalty to be applied for *hudud* crimes regardless of age.

1087. As mentioned in our communications dated 11 August and 24 September 2008, reports (which have remained unchallenged by your Excellency's Government) indicate that the defendants in the trials concerning the attacks against Omdurman were held without

access to the outside world after their apprehension and were not given access to lawyers until after the trial proceedings opened.

1088. Turning to the general question of the imposition and execution of the death penalty for offences committed by children, the Special Rapporteurs' attention has been drawn to the case of Abdulrahman Zakaria Mohammed. According to the information received with regard to this case:

1089. On 3 May 2007, Abdulrahman Zakaria Mohammed, aged 17 at the time of the trial, was found guilty of murder and robbery and sentenced to death by the Nyala General Court in South Darfur. The Court reasoned that the Interim National Constitution and the 1991 Criminal Act excluded hudud offences from the general ban against the death penalty for offenders aged less than 18 years at the time of the crime. The court concluded that, as the provisions of the Sudanese Constitution prevail over the provisions of any other domestic law, the victim's family's right to retribution (qisas) prevails over the 2004 Child Act which prohibits the death penalty for offences committed by minors.

1090. On appeal, the Nyala Appellate Court quashed the judgment and returned the case for reconsideration to the Nyala General Court. The Appeals Court argued that, although the child had been found guilty of murder, the imposition of the death sentence was not permissible according to the Child Act 2004. It instructed the Nyala General Court to apply the appropriate alternative measures stipulated in the Child Act, and to decide on the compensation (blood money) for the family of the deceased.

1091. The victim's family, however, refused to accept compensation (blood money) as an alternative punishment for the offence, and appealed the Nyala Appellate Court's decision instead.

1092. The case thus reached the Supreme Court in Khartoum, which in December 2008 confirmed the decision of the Nyala General Court and the death sentence against Abdulrahman Zakaria Mohammed. The Supreme Court based its decision on two arguments. First, it found that under both the Constitution and the 1991 Criminal Act the prohibition of the death penalty for children and those above age seventy did not extend to hudud offences. Second, the Supreme Court found that the definition of a child should be drawn from the definition of "adult" provided in the Criminal Act. According to the Criminal Act, "adult means any person whose puberty has been established by definite natural features and who has completed fifteen years of age, and whoever attains eighteen years of age shall be deemed an adult even if the features of puberty do not appear". Therefore, as long as the defendant had reached 15 years of age and the natural puberty features had been established, the Criminal Act provisions applicable to adults should be applied, rather than the Child Act. The Supreme Court upheld the decision of the Nyala General Court and confirmed the death sentence against Abdulrahman Zakaria Mohammed.

1093. Abdulrahman Zakaria Mohammed was executed in El Fasher, North Darfur, on 14 May 2009.

### **Communications received**

*(Translated from Arabic)*

1094. In a letter dated 18 March 2010, the Government acknowledged receipt of the communication and replied as follows: Letter dated 9 March 2010 from Dr. Abd al-Man'am Mohammed, Rapporteur for the Advisory Council for Human Rights of the Sudan, addressed to the Permanent Mission of the Republic of the Sudan to the United Nations Office at Geneva, concerning urgent appeal UA G/SO 214 (3-3-16) G/SO 214 (33-27). The letter states that the Council received the correspondence from the Ministry of Foreign Affairs on 25 February 2010 and that it will take time to review the court reports and

prosecution procedures before a detailed reply can be provided, especially as some of the cases involved were processed in the States of Niyala, Fasher and Darfur. The author of the letter therefore asks for more time to be able to reply in detail and assures the Mission of the Council's commitment to providing the necessary information in a fully transparent manner.

1095. In a letter dated 18 May 2010, the Government provided the following response to the communication:

*(Translated from Arabic)*

1096. Letter dated 9 May 2010 from the Advisory Council for Human Rights of the Republic of the Sudan addressed to the Under-Secretary for Foreign Affairs of the Sudan, with copies to the Director of the Department for Human Rights and Women and Children, transmitting information (in the annex) on the incidents in Omdurman in May 2008 and on the cases of defendants who were allegedly children at the time of the attack. The author states that the Council needs more time to gather information on the case of Abdullrahman Zakaria Mohammed and will send information in due course. The letter is signed by Dr. Abd Al-Man'am Mohammed, Rapporteur for the Council.

1097. Annex

Advisory Council for Human Rights

Reply to letter from the Special Rapporteurs regarding the trials of:

1. Mohammed Hashim Ali Abdu
2. Ishag Yaseen Ali Adam
3. Abdelsalam Yahya Abdallah Adam
4. Mohammed Al Duman Yahya Abaker
5. Mohammed Al Taib Mustafa Al Sanousi
6. Mansur Ibrahim Abaker Hashim
7. Mohammed Adam Zariba
8. Al Sadig Mohamed Jaber Al Dar Adam

1098. With reference to the urgent appeal, transmitted by the Ministry of Foreign Affairs, from the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers, concerning the above-mentioned citizens who were tried for taking part in the attack on Omdurman in October 2008 and sentenced to death even though they were under 18 at the time of trial, we wrote to the competent authorities about the matter and should like to provide you with the following information.

1099. According to information provided by the defendants during the preliminary investigation, all the defendants were over 18, except for Mohamed Jabar Al Dar Adam, who said that he was 17 but provided no proof of age. He did show all signs of having reached his majority, however. For these reasons, the court sent him to medical experts for an age assessment. They reported back that he was over 18, and therefore he was sent for trial and convicted under article 168 of the Criminal Code of 1991.

1100. The courts established that over 104 persons under the age of 18 were involved in the attack on Omdurman. These persons were sent before the juvenile courts and subsequently pardoned by the President of the Republic and released and returned to their families.

### Comments and observations of the Special Rapporteur

1101. The Special Rapporteur thanks the Government for the response. She welcomes the information that the 104 persons under the age of 18 who were found to be involved in the attack on Omdurman were tried before juvenile courts and pardoned by the President. She welcomes their release and the information that they were returned to their families. The Special Rapporteur further notes that the eight persons named in the communication had reached the age of eighteen at the time of their trial.

1102. With reference to the request made in the communication dated 10 February 2010 to provide information on the questions raised in the communication dated 10 October 2008, the Special Rapporteur calls upon the Government to provide such response. In particular, replies are awaited on the question on the Southern Sudan legal aid system and steps taken to ensure that all persons sentenced to death are provided with legal counsel and informed of their right thereof, and of the right to be assigned legal counsel at not cost of they cannot afford it; on the concerns raised in the aforementioned communication in respect of article 130 of the 1991 Criminal Code and article 244 of the 2003 Code of Criminal Procedure. The Special Rapporteur would appreciate receiving a response to these outstanding questions.

## Syrian Arab Republic

### Communication sent

1103. On 18 March 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an urgent appeal regarding **Mr. Haithem al Maleh**, 78 years old. Mr. al Maleh has been a lawyer since the 1950s and in 2001 established the Human Rights Association in Syria (HRAS). Mr. al Maleh was the subject of two urgent appeals by several special procedures on 21 October 2009 and 23 February 2004.

1104. According to the new information received, during Mr. al Maleh's incommunicado detention at the General Security building (see previous communication of 21 October 2009), he was detained in a room without food or drink and in which a number of torture tools were displayed. There, he was reportedly subject to an inquiry by high ranking officers of the General Intelligence, who questioned him extensively on an interview he gave to Barada TV on 12 October 2009 and articles he had written regarding his client Mr. Muhammad Al-Hassani, as well as other human rights work he had undertaken.

1105. On 19 October 2009, Mr. Haithem al Maleh was transferred to a branch of the Military Police in Qaboun, Damascus. On 3 November 2009, the Military General Prosecutor charged him with Articles 374 and 377 of the Criminal Law (Contempt of the Head of State"), Article 285 of the Criminal Law (Contempt of Public Administration), and Article 286 of the Criminal Law (Crime of disseminating false information affecting the morale of the nation). The military prosecution subsequently retained the charge under Article 286 of the Criminal Law, for which Mr. al Maleh remains in detention. According to the information received, his trial before the Military Court of Damascus is ongoing.

1106. Since 21 October 2009, Mr. al Maleh has been detained in Adra prison, Damascus. Information received suggests that in the first few weeks of his detention and again since 11 February 2010, Mr. al Maleh, who suffers from diabetes and an overactive thyroid gland, has been refused his medication as prescribed by his doctors, causing a serious deterioration of his state of health. Reports received suggest that during his hearing before the military

judge on 22 February 2010, Mr. al Maleh was so weak that he could hardly speak. In addition, he had fainted during hearings earlier in February.

1107. Mr. al Maleh was detained in a cell with approximately 60 people. The cell does not contain any beds, simply mattresses on the floor, which are shared by several detainees. Water in the prison was often cut off, meaning the detainees cannot wash for long periods and have to use the toilet without any water – leading to serious health risks.

#### **Communication received**

1108. In a letter dated 1 April 2010, the Government responded to the communication sent on 18 March 2010 as follows. With regard to the letter asking for clarification about Syrian citizen Haithem Al-Maleh, the Government should like to explain that Mr. Al-Maleh was arrested by the competent authorities for committing unlawful acts which are punishable under the Syrian General Criminal Code. His arrest had nothing to do with his defending Muhannad Al-Hassani.

1109. According to the Syrian Code of Criminal Procedures, the courts may not pursue criminal proceedings against any citizen unless he or she has engaged a defence lawyer. Otherwise, the judicial body conducting the trial must ask the Bar Association to designate one of its lawyers to act, free of charge, as defence counsel in the case. The facts and the logic of the case disprove the false information which you have received from your sources. Mr. Al-Hassani has a number of lawyers acting as his legal representatives and defence team. None of these persons has been arrested for defending Mr. Al-Hassani. The Government of the Syrian Arab Republic fully respects the legal practice of defending accused persons in court and regards the legal profession as one of the noblest of all the human professions. In this connection, the Government should like to reiterate its views about the sources on which Special Procedures rely for information on issues relating to it cooperation with them. Most of these sources have no other aim than to damage the good name of the Syrian Arab Republic by submitting false information and making unfounded allegations about the Government.

1110. Mr. Haithem Al-Maleh was arrested for committing offences which are punishable under the Syrian General Criminal Code, namely, incitement and terrorization of others by disseminating false information in the Syrian Arab Republic and abroad with the aim of damaging the reputation of the Government of the Syrian Arab Republic vis-à-vis Syrian citizens and international organizations, undermining national unity in Syrian society and stirring up citizens against one another and against their Government. He was arrested and brought before the competent judicial body, namely, the Office of the Military Prosecutor in Damascus, which investigated the case. The Office discovered that, while committing these offences, Mr. Al-Maleh had also defamed the Syrian judiciary. Therefore, it filed proceedings against him for the following offences: (a) Defaming the judiciary, which is punishable under article 376 of the General Criminal Code; (b) Disseminating false information likely to weaken national sentiment, which is an offence under article 286, referring to article 285 of the General Criminal Code; and (c) Disseminating abroad false information likely to damage the prestige of the State, which is an offence under article 287 of the General Criminal Code.

1111. The case file was then sent to the chief military investigating judge in Damascus, who interviewed Mr. Al-Maleh about the allegations and confronted him with the evidence submitted by the Office of the Prosecutor. After the interview was completed, the investigating judge issued a decision, on 1 November 2009, formally charging Haithem Al-Maleh with disseminating false information likely to weaken national sentiment, which is an offence under article 286, referring to article 285 of the General Criminal Code, defaming the judiciary, which is an offence under article 376 of the General Criminal Code, and disseminating abroad false information likely to damage the prestige of the State,

which is an offence under article 287 of the General Criminal Code. The investigating judge's decision was open to appeal at cassation. Indeed, Mr. Al-Maleh did appeal the decision through his defence lawyers. The appeal was lodged with the criminal division of the Syrian Court of Cassation, which is the highest court in the Syrian Arab Republic and has the final say as to whether this person should be tried by a criminal court or proceedings should be discontinued and he should be released.

1112. As for Mr. Al-Maleh's health and the information in the letter that he suffers from diabetes and an overactive thyroid gland and is therefore in need of appropriate medical treatment and medicine, the Government should like to provide Special Rapporteurs with a categorical assurance that Mr. Al-Maleh is receiving appropriate medical treatment and care in prison at the hands of the prison doctor. In addition, should he, or any other prisoner in a Syrian prison, require the assistance of a medical specialist, the competent prison administration responsible for protecting prisoners' welfare will make sure that he is given a physical examination and is taken care of by medical specialists in the Syrian Arab Republic. In this regard, the Government should like to assure you that, in keeping with our values and our cultural and human heritage, we are required to provide prisoners with full humanitarian and health care, irrespective of the obligations set out in the relevant international treaties which the Government of the Syrian Arab Republic applies and by which it is bound. The Government views any failing in this regard not only as an infringement of international law and human rights but also a breach of values and morals. The Government hopes that Special Rapporteurs will always inform us of any allegation that they receive about any failing in this regard so that it may hold those responsible to account, if proven guilty.

1113. As for the information in the letter about Mr. Al-Maleh's right to freedom of expression under international instruments, the Government of the Syrian Arab Republic assures Special Rapporteurs that, just like other citizens, Mr. Al-Maleh exercises his full rights as a member of Syrian society, including his right to freedom of expression and opinion. We in the Syrian Arab Republic are fully committed to protecting this right, which is explicitly safeguarded under the Syrian Constitution. However, any citizen who steps over the internationally recognized limits on the right to freedom of expression by inciting others, stirring up fear, undermining national unity and the prestige of the State and defaming the judiciary shall be deemed to have committed a criminal act which is punishable under Syrian law and must be prosecuted by the courts.

1114. With regard to guaranteeing a fair trial before an impartial court, the Government must draw the attention of Special Rapporteurs to the fact that the laws of the Syrian Arab Republic are in conformity with all international treaties and norms and are entirely in line with the laws in effect in most countries of the world. The Government can also assure the Special Rapporteurs that it has a firmly established judiciary and judges who are impartial, enjoy complete immunity and have full authority in the exercise of their functions. Any person who infringes the law is subject to the authority conferred on the courts by the Constitution and the law, which regulate all decisions, procedures and judgements of the courts with a view to protecting Syrian society and safeguarding human rights.

**Comments and observations of the Special Rapporteur:**

1115. The Special Rapporteur thanks the Government for its response. She would appreciate receiving substantive information regarding the prosecution of Mr. al Maleh as a civilian under the military jurisdiction and how it complies with international standards, as laid down in the International Covenant on Civil and Political Rights, the Human Rights Committee General Comment No. 32 (para. 22) and its decision No. 1172/2003 (*Madani vs. Algeria*), as referred to in the communication sent to the Government.

### **Communication sent**

1116. On 6 July 2010, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the sentencing of **Mr. Muhannad al-Hasani**, President of the Syrian Human Rights Organization and Commissioner of the International Commission of Jurists, to three years imprisonment.

1117. The case of Mr. Al-Hasani has previously been addressed by the Special Procedures Mechanisms in the communications dated 3 August 2009 and 10 December 2009. In these communications, concern was raised that the disbarment and criminal charges against Mr. Al-Hasani were reportedly related to his peaceful and legitimate activities in defense of human rights, including as a lawyer. [Two responses have been received to the communication dated 10 December 2009. The second dated 29 July 2010 which was sent during the reporting period is summarized below.]

1118. According to information the Special Rapporteurs have now received, the Second Criminal Court started hearing the case of Mr. Al-Hasani on 18 February 2010, on the charges of “weakening national sentiments and encouraging racist and sectarian feelings”, and “transferring false and exaggerated news that weaken national sentiments” under Articles 285, 286 and 287 of the Penal Code.

1119. Five subsequent hearings were conducted on 10 March, 6 April, 4 May, 27 May and 6 June. The final hearing and sentencing took place on 23 June 2010, and he was sentenced to three years imprisonment.

1120. According to information received, a number of procedural fair trial guarantees were not complied with during the trial. The defense lawyers called 11 (eleven) witnesses to testify during the trial and it is alleged that the President of the Second Criminal Court denied all defense witnesses from testifying and did not take into account the evidence submitted by the defense. The conviction of Mr. Al-Hasani was based on three secret reports of the General Intelligence Service, even though defence lawyers had presented credible evidence undermining the authenticity of the reports. Further Mr. Al-Hasani’s lawyers were not allowed to visit and meet with him in jail without authorization from the Bar Association. On several occasions, the Bar Association refused to his lawyers to visit him in jail. During consultations with his lawyer there was a prison guard present.

### **Communications received**

1121. In a letter dated 29 July 2010, in response to the previous communication sent on 10 December 2009 concerning the same case, the Government provided information as follows. With regard to the information that you have received in respect of Mr. Muhannad al-Hasani, a lawyer, we hereby inform you that at the Disciplinary Committee of the Damascus Branch of the Bar Association held a hearing on 10 November 2009, presided over by the Branch President and attended by six lawyers in addition to Mr. Al-Hasani’s legal representatives, namely, Mr. Haitham al-Malih, Mr. Hasan Abd al-Azim and Mr. Radif Mustafa. The hearing was held pursuant to the Chairman of the Bar’s decision to initiate disciplinary action against Mr. Al-Hasani and transfer him to the Disciplinary Committee of the Damascus Branch of the Bar Association. Annexed to that decision were 17 statements published on the Internet and attributed to the “Syrian Organization for Human Rights”, an organization of which Mr. Al-Hasani presided without having obtained the necessary legal authorizations, in violation of Act No. 39 regulating the legal profession and its rules of procedure. The said Act prohibits any lawyer from founding an association or forum without having first notified his branch of the Bar Association and obtained formal authorization from the competent authorities. Mr. Al-Hasani was invited to appear before the lawyer assigned to investigate his case, but failed to attend. We wish to



underscore that the Disciplinary Committee initiated purely disciplinary action against Mr. Al-Hasani, not criminal proceedings.

1122. The above confirms that the alleged information contained in the case file is inaccurate. A formal complaint was brought against Mr. Al-Hasani not because he was monitoring open trials and documenting trial proceedings without being mandated to do so or without being involved in those trials; that is a matter for the courts, not the Bar Association. It was decided, in the presence of his lawyers, to disbar Mr. Al-Hasani for professional misconduct in accordance with the Bar Association Regulatory Act, which is broadly consistent with international norms and standards having been drafted by leading Syrian lawyers in line with the legislation regulating the legal profession in most countries of the world. The decisions of the Committee, which is established in accordance with that Act, cannot therefore be subject to any political or personal considerations. In the course of its history, the Bar Association has taken numerous decisions to disbar lawyers for professional misconduct under the Bar Association Regulatory Act.

1123. It should be noted that if it is ascertained that Mr. Al-Hasani has been in any way wronged, he is fully entitled to appeal to the Committee, which serves as a supreme court and would certainly redress any injustice.

1124. In a letter dated 31 November 2010, the Government responded to the communication sent on 6 July 2010 as follows. In paragraph 4 of your letter of 6 July 2010, addressed to us with regard to the situation of Mr. Muhannad al-Hasani, you requested detailed information in relation to the concerns raised in your earlier communications, to which the Government of the Syrian Arab Republic has replied in detail describing Mr. Al-Hasani's legal situation and the charges against him in full.

1125. We hereby reaffirm that he was arrested for an offence punishable under the Syrian General Criminal Code, namely, spreading false and exaggerated information in order to discredit and damage the Government of the Syrian Arab Republic, at the national and at the international level, with the aim of destabilizing the Syrian Arab Republic, inciting the international community against the Syrian Government and undermining national unity. Mr. Al-Hasani exploited his status as a lawyer and used the defence of human rights as a cover whilst perpetrating these acts. He distorted and falsely represented Supreme State Security Court and other court proceedings in news items stories that bore little relation to the facts of the trials that he attended. He did so in order to present himself as a human rights defender and draw attention to himself, at the expense of his country's reputation; however, he was far from being truthful, fair and balanced as would befit a defender of human rights. In this connection, we wish to underscore that Supreme State Security Court trials in the Syrian Arab Republic are open and are attended by numerous European diplomats assigned by their embassies. Mr. Al-Hasani's case, therefore, was transferred to the Office of the Public Prosecutor in Damascus, which assessed the initial investigation and the evidence before it. The Office of the Public Prosecutor decided to institute public proceedings against him for detracting from the reputation of the State, undermining national sentiment, spreading false and exaggerated information in the Syrian Arab Republic and abroad and establishing illegal ties; these are offences under articles 275, 285, 286 and 287 of the Syrian General Criminal Code.

1126. Mr. Al-Hasani's case was reviewed by the first investigating judge in Damascus who had conducted the investigation and collected and examined the evidence. He decided on 12 October 2009, on the facts of the case and the evidence, that the case brought by the Public Prosecutor was correct with regard to the legal qualification of the allegations against Mr. Al-Hasani. He therefore decided to refer the case to the urgent applications judge, in accordance with the Syrian Code of Criminal Procedure, to consider issuing an indictment, whereupon the case would be referred to the Criminal Court in Damascus. The urgent applications judge in Damascus then considered the facts of the case and the

evidence and decided to issue an indictment against Mr. Al-Hasani and to bring him to trial before the Criminal Court.

1127. An appeal against Mr. Al-Hasani's indictment was submitted to the Syrian Court of Cassation, which is the highest judicial authority in the Syrian Arab Republic. Its decision as to whether or not Mr. Al-Hasani is tried by the Criminal Court as it deems compatible with Syrian law is final.

1128. With regard to the questions raised in your most recent letter, the course of Mr. Al-Hasani's trial is set out below, from the start.

1129. The urgent applications judge submitted the appeal to the Court of Cassation, which, having considered it, decided to endorse the indictment. The case was subsequently referred to the Second Criminal Court in Damascus for consideration of the allegations against Mr. Al-Hasani. Based on the outcome of the trial, the court decided to acquit him of the charge of establishing illegal ties, which is an offence under article 275 of the Criminal Code, for lack of evidence. It decided to convict him of spreading information in the Syrian Arab Republic that would harm the nation and weaken national sentiment, both of which are serious offences under articles 285 and 286 of the Criminal Code. Mr. Al-Hasani was duly sentenced to 3 years' imprisonment for these offences. In addition, the court decided to convict him of spreading exaggerated information abroad that would discredit the State, which is an offence under article 286 (1) of the Criminal Code, and sentenced him to 6 months' imprisonment and a fine of 100 Syrian pounds. The court decided to merge and implement the most severe of these penalties, namely, 3 years' imprisonment. The Criminal Court issued its decision on 23 February 2010; in the body of the decision, it discussed the facts and defences brought by the public prosecution, represented by the Office of the Public Prosecutor, and by the accused, represented by his defence counsel.

1130. In your letter, you state that "the defence lawyers called 11 witnesses to testify during the trial and it is alleged that the President of the Second Criminal Court denied all defence witnesses from testifying and did not take into account the evidence submitted by the defence. The conviction of Mr. Al-Hasani was based on three secret reports of the General Intelligence Service" and "procedural fair trial guarantees were not complied with". In this connection, we assure you that the information that you have received from your sources is incorrect and distorted. In fact, Mr. Al-Hasani's defence requested that a number of people be heard as witnesses so that those persons could deny his criminal intent. The court turned down this request as the court alone is competent to interpret criminal intent. The available evidence against Mr. Al-Hasani was compelling written evidence of bad faith and criminal intent and did not need anyone to interpret or explain them. The remarks concerning the three secret General Intelligence reports are completely false; once the contents of the case file are available for judicial review, all involved in the prosecution and the defence have access to it. There are no secret reports; it was General Intelligence that conducted the initial investigation into Mr. Al-Hasani and General Intelligence that submitted its findings to the Office of the Public Prosecutor in Damascus, with numerous pieces of written evidence. Mr. Al-Hasani did not refute but recognized and confessed most of that evidence, at all stages of the investigation and the trial. He did, however, deny that he had illegal ties and that he had received funds from certain parties. The court reviewed his statement, as the initial investigation had not provided sufficient evidence of these crimes, and decided to acquit him of this charge. The court's decision to convict Mr. Al-Hasani for the other charges was not based on any secret reports, but on the ample evidence and on his confessions.

1131. In addition, we assure you that the defence counsel did not put forward any credible evidence that would cast doubt on the validity of the evidence submitted by the public prosecution and we again express our strong reservations concerning your description of some of the evidence presented openly in the case as secret reports. Moreover, we assure

you that Mr. Al-Hasani was not prevented from meeting with his defence counsel; they remained in quiet, continuous communication with him in prison and during the trial hearings, without any interference or hindrance.

1132. An appeal against the decision of the Criminal Court in respect of Mr. Al-Hasani's case has been lodged with the Syrian Court of Cassation and is currently under consideration. The Court of Cassation is the highest judicial authority in Syria and is competent to determine the extent to which the trial of Mr. Al-Hasani was, or was not, compatible with the law.

### **Comments and observations of the Special Rapporteur**

1133. The Special Rapporteur thanks the Government of the Syrian Arab Republic for the response to the previous communication, received on 29 July 2010 and for the response to the communication dated 6 July 2010. She would appreciate receiving information on the conduct and outcome of Mr. Al-Hasani's trial before the Court of Cassation.

### **Communication sent**

1134. On 13 October 2010, the Special Rapporteur, together with The Chair-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 torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the arrest, and alleged disappearance of **Mr. Ismail Abdi**. Mr. Abdi is a lawyer and member of the board of trustees of the Committees for the Defence of Democracy Freedoms and Human Rights in Syria (CDDFHRS), and has written numerous articles concerning the situation of human rights in the Syrian Arab Republic.

1135. According to the information received, on 23 August 2010, Mr. Abdi was arrested by members of the Amn al Dawla (State Security Forces) in Aleppo Airport, Syrian Arab Republic, as he attempted to return from the Syrian Arab Republic to his residence in Germany, along with his wife and three of his children. Since his arrest, Mr. Abdi's family and colleagues have received no information regarding neither his location nor his fate.

1136. It was reported that while in the airport, Mr. Abdi was taken aside by members of the Amn al Dawla for a security check, before being taken away by the security agents without being able to communicate further with his family.

1137. Upon inquiring at the time of arrest as to where Mr. Abdi would be taken, Mr. Abdi's family members were reportedly informed by a member of the Amn al Dawla that he would probably be taken to the State Security headquarters in Qamishli. However, when asked, officials at said headquarters denied holding anyone by the name of Ismail Abdi.

1138. Mr. Abdi's family had expressed concern that the arrest and alleged disappearance are related to his work on CDDFHRS' publication, in February 2010, of a list of some 600 names of individuals who had allegedly been tortured and killed in Syrian prisons between 2008 and 2010.

1139. Concern was expressed that the arrest and alleged disappearance of Mr. Abdi are related to his peaceful and legitimate activities in defence of human rights, in particular with respect to the aforementioned publication. Furthermore, mindful of the fact that the location of Mr. Abdi's detention allegedly remains unknown and the lack of any formal charges brought against him, concern was expressed for his physical and psychological integrity.

**Communication received**

1140. In a letter dated 1 December 2010, the Government responded to the communication sent on 13 October 2010 as follows. With regard to the information that you have received in respect of Mr. Isma'il Abdi, a lawyer, we hereby inform you that Mr. Abdi was lawfully arrested on 23 August 2010 for publishing inflammatory articles that seek to undermine respect for the State, national sentiment and national unity, for bringing the country into disrepute abroad, for attacking the system of government in Syria and for communicating with Al-Mustaqillah and Al Jazeera satellite channels and making statements on the so-called persecution of the Kurds in the Syrian Arab Republic that would encourage the spread of sectarianism.

1141. Mr. Abdi was duly transferred to the Syrian courts, where the required legal action will be taken against him by means of an impartial and fair trial.

**Comments and observations of the Special Rapporteur**

1142. The Special Rapporteur thanks the Government of the Syrian Arab Republic for the reply to her communication of 6 July 2010. She reiterates her concern at the situation of Mr. Abdi and urges the Government to provide information about his fate and whereabouts and whether his family has been informed thereof. She would also appreciate detailed information on any investigations and criminal proceedings initiated in relation to this case and indicate how they comply with international norms and standards as stated, *inter alia*, in the International Covenant on Civil and Political Rights and the Basic Principles on the Role of Lawyers.

**Communication sent**

1143. On 9 November 2011, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the situation of **Mr. Haytham Al-Maleh**. Mr. Al-Maleh, aged 79, has been a lawyer since the 1950s and in 2001 founded the Human Rights Association in Syria (HRAS).

1144. Mr. Al-Maleh was the subject of a Joint Urgent Appeal from 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 23 February 2004; 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 situation of human rights defenders; and the Special Rapporteur on torture and other cruel, in human, or degrading treatment or punishment dated 21 October 2009; and a Joint 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; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, in human, or degrading treatment or punishment dated 18 March 2010. The response of your Excellency's government to the Joint Urgent Appeals dated 21 October 2009 and 18 March 2010 was received on 1 April 2010 and summarized above.

1145. According to information now received, on 4 July 2010, Mr. Haytham Al-Maleh was sentenced to three years imprisonment by a Syrian Military Court, on charges of disseminating false information which could harm the nation.

1146. Concerns have been expressed regarding the fairness of Mr. Al-Maleh's trial before a Military Court, given that Mr. Al-Maleh holds no military status, and the crime of which he was found guilty was not of a military nature. Furthermore, the Code of Military Procedures, in accordance with which Mr. Al-Maleh was sentenced, allegedly fails to offer many of the fair trial guarantees stipulated in the International Covenant on Civil and Political Rights and the Syrian Code of Criminal Procedures.

1147. On 15 October 2010, the appeal lodged by Mr. Al-Maleh's lawyer was rejected by the Damascus Appeals Court, Military Room. It is reported that Mr. Al-Maleh has no further recourse to appeal within Syria.

1148. Serious concerns have also been expressed regarding Mr. Al-Maleh's treatment while in detention and the conditions in which he is detained. Mr. Al-Maleh suffers from diabetes and an overactive thyroid gland, and it is alleged that, while he has been provided with some medication, he reportedly continues to be denied access to the medication specifically prescribed to him for his illnesses by his doctors. We hereby acknowledge receipt of the response provided by your Excellency's Government on 1 April 2010 concerning the medical assistance provided to Mr. Al-Maleh. However, we regret that the response did not provide substantive information regarding allegations indicating that Mr. Al-Maleh is being denied the specific medical assistance as prescribed by his doctors.

1149. It was reported that Mr. Al-Maleh shares a cell with as many as 60 other prisoners, in which there are no beds and a limited number of mattresses, and that the water in the prison is often cut off, leading to health risks. It is also reported that Mr. Al-Maleh has developed a degenerative knee infection, back problems, and recurrent influenza.

1150. Given Mr. Al-Maleh's age, state of health and the conditions in which it is alleged that he is detained, serious concern was expressed for his physical and psychological integrity. Concern was also expressed that the rejection of the appeal against Mr. Al-Maleh's sentence may be related to his legitimate and peaceful work in defence of human rights, including as a lawyer. In this connection, further concern was expressed that the aforementioned decision forms part of a pattern of ongoing judicial harassment against human rights defenders and lawyers in Syria.

#### **Communication received**

1151. At the time this report was finalized, no response to this communication has been received.

#### **Communication sent**

1152. On 11 November 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the situation of **Mr. Muhannad Al-Hassani**, President of the Syrian Human Rights Organization "Sawasiya" and a Commissioner of the International Commission of Jurists, currently serving a three year prison sentence for "weakening national sentiments and encouraging racist and sectarian feelings", and "transferring false and exaggerated news that weaken national sentiments". In October 2010, Mr. Al-Hassani received the 2010 Martin Ennals Award for human rights defenders and the Dean Award of the Amsterdam Bar Association.

1153. The case of Mr. Al-Hassani has previously been addressed by the Special Procedures Mechanisms in a Joint Urgent Appeal sent by the Vice-Chair Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the

situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment dated 3 August 2009; a Joint Urgent Appeal sent by the Special Rapporteur on human rights defenders; 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, dated 10 December 2009; and a Joint Urgent Appeal sent by the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers dated 6 July 2010. In these communications concern was raised that the disbarment, charges, trial and sentencing of Mr. Al-Hassani were related to his peaceful and legitimate activities in defence of human rights, including as a lawyer. The response of the Government to the communication dated 10 December 2009, was received on 29 July 2010.

1154. According to information now received, on 28 October 2010, Mr. Muhannad Al-Hassani, who reportedly shares a cell with at least 30 convicted criminals, was attacked and severely beaten by a cell-mate, whose name is known to us. The attack reportedly caused a wound in his forehead which required ten stitches, as well as swelling of his left eye and cheek. The alleged attacker is reported to be serving a prison sentence for rape, armed robbery and forming a criminal gang. As he assaulted Mr. Al-Hassani, the perpetrator allegedly accused him of being an agent for a foreign entity and not being a Syrian nationalist.

1155. It is reported that the prison authorities subsequently launched an investigation into the assault. However, it is alleged that in the process of the said investigation, comments made by the alleged attacker before the investigation committee in which he threatened to kill Mr. Al-Hassani were not recorded in the charge sheet. It is further alleged that despite making a request to transfer the alleged perpetrator to another cell, Mr. Al-Hassani remains imprisoned in the same cell along with his attacker.

1156. On 29 October 2010, the day following the attack, the Penal Chamber at the Court of Cassation reportedly rejected Mr. Al-Hassani's appeal, confirming the three-year sentence passed by the Second Damascus Criminal Court on 23 June 2010, and leaving Mr. Al-Hassani with no further legal recourse within the Syrian Arab Republic.

1157. Given the serious risk that Mr. Al-Hassani may be subjected to further attacks, grave concern was expressed for his life, and physical and psychological integrity. Further concern was expressed that both the attack against Mr. Al-Hassani and subsequent rejection of his appeal before the Court of Cassation may have been related to his legitimate and peaceful activities in defence of human rights, particularly as a lawyer.

#### **Communication received**

1158. At the time this report was finalized, no response to this communication has been received. However, a response to the previous communication dated 10 December 2009 in relation to this case was received on 20 July 2010 and is summarized above.

#### **Communication sent**

1159. On 12 November 2010, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women, its causes and consequences, sent an urgent appeal concerning the situation of **Ms. Eliaza al-Saleh**, a mother of three teenagers, who was sentenced to death on 29 September 2009, by the Military Criminal Court in Homs for acting as an accomplice in the murder of her husband, Fouad al-Naqari, on 26 July 2007. The sentence was confirmed by the Court of Cassation on 2 March 2010. Information now

made available to us indicates that she has been moved from her cell to prepare for her execution.

1160. According to the information received, Ms. Al Saleh is the victim of several years of spousal, physical and sexual abuse by her husband, Fouad al-Naqari. It is reported that, on at least one occasion, Mr. Al Naqari had forced Ms. Al Saleh to sleep with his debtor in order to defray a debt he owed them. It is also alleged that Mr. Al Naqari would humiliate her by stripping her naked and ordering her to get things for him by carrying them in her mouth. On another occasion Mr. Al Naqari brought another woman home and, when Ms. Al Saleh disapproved of this, he slapped her and ordered her to crawl around the house in front of the other woman. It is also reported that Mr. Al Naqari raped and frequently beat her, with various items including a knife, which resulted in a tear in her mouth, a broken rib and broken shoulder.

1161. During interrogation it is alleged that she confessed to the charge that she had acted as an accomplice to her husband's killing even though she subsequently denied the charge during trial. In any case, the court did not examine the circumstances of the offense, including the possible mitigating circumstances.

#### **Communication received**

1162. At the time this report was finalized, no response to this communication has been received.

#### **Communication sent**

1163. On 18 January 2011, the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal regarding **Mr. Ziad Wasef Ramadan**, who has been detained for over five years without any charge, trial or even been presented before a judge, and who is to be presented before the State Security Supreme Court on Monday, 17 January 2011.

1164. The Working Group on Arbitrary Detention recently considered, in its Opinion No. 24/2010, that Mr. Ramadan's detention was arbitrary.

1165. According to the information received: it was reported that Mr. Ramadan would be under strong pressure from the authorities not to allow any lawyers to defend him and accept any eventual charges to be laid against him.

1166. In fact, the source reports that Mr. Ramadan's lawyers have not been authorized to see him. His family has had only very brief contact with him.

1167. Concerns have been expressed that international norms relating to the right to a fair trial not would be observed during this hearing and any subsequent trial. In this connection, we would like to refer Your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular principle 6 which provides that "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

#### **Communication received**

1168. At the time this report was finalized, no response to this communication has been received.

**Communication sent**

1169. On 9 February 2011, the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the detention of and charges against **Mr. Ali Al-Abdullah**, member of the National Council of the Damascus Declaration for National Democratic Change, a legislative body composed of numerous opposition groups and activists who have been advocating for democratic reforms in the Syrian Arab Republic. Mr. Al-Abdullah has allegedly been imprisoned on three previous occasions: he spent six months in detention after returning from abroad to live in the Syrian Arab Republic in the 1990s; he served almost six months in prison in 2005 for his involvement with the Jamal al-Atassi Forum, where he read out a statement by the exiled Muslim Brotherhood leader who called for pluralism and human rights to be respected in the Syrian Arab Republic; and he served a six-month sentence in 2006 for having participated in a protest outside the Supreme Security Court (SSSC) against the trials that do not comply with international fair trial standards.

1170. According to recent information received, on 17 December 2007, Mr. Ali Al-Abdullah was detained by State security officials after he and others associated with the Damascus Declaration met to elect a new executive committee. He was sentenced by a criminal court in Damascus, together with 11 other activists, to two and a half years of imprisonment on vaguely defined charges of “weakening the national sentiment” and “spreading false or exaggerated news that would affect the morale of the country” (article 286 of the Penal Code).

1171. During his detention, Mr. Al-Abdullah wrote an article criticizing the Islamic Republic of Iran’s Wilayat-al-Faqih doctrine, which grants absolute political authority to a religious figure, as well as alleged human rights violations committed during the presidential election in the Islamic Republic of Iran. On 23 August 2009, the article reportedly appeared online, and on 19 April 2010, Mr. Al-Abdullah was allegedly interrogated by a prosecutor from the State Security Court. In June 2009, he also allegedly made a statement via telephone to the Italian AKI news agency in which he praised the elections that had taken place in Lebanon and then criticized the Iranian authorities’ use of excessive force against peaceful protestors demonstrating that month against the disputed presidential election results.

1172. On 17 June 2010, at the end of their prison terms, all detainees were released, except for Mr. Al-Abdullah. He was informed by the officials of Political Security, one of Syrian Arab Republic’s security services, that his case will be referred to the military prosecutor for new charges relating to the article that he wrote on the Islamic Republic of Iran. On 19 September 2010, he was charged by a military investigative judge with “spoiling Syria’s relations with another country” (article 278 of the Penal Code), for which, if found guilty, he could be sentenced to up to 15 years’ imprisonment. On 1 December 2010, a military court confirmed the charge.

1173. On 7 February 2011, a hearing took place before the Second Criminal Military Court in Damascus, where the judge informed Mr. Al-Abdullah that the charge of “spoiling Syria’s relations with another country” relate to his statement regarding the Islamic Republic of Iran. His lawyers have allegedly been unable to meet him without an officer from the security forces monitoring their conversations. Additionally, his lawyers have not had access to the full case file. His next hearing is scheduled to take place on 23 February 2011.

1174. Concern is expressed that Mr. Ali Al-Abdullah has been sentenced for peacefully expressing his opinions and in connection to his work in defence of human rights and



fundamental freedoms. Further concern is expressed regarding his trial by a military court on broad charges, as well as his physical and psychological integrity.

#### **Communication received**

1175. At the time this report was finalized, no response to this communication has been received.

#### **Communication sent**

1176. On 18 February 2011, the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal regarding the sentencing of **Ms. Tal al-Mallohi**, a 19-year-old high school student and blogger. Her blog (<http://talmallohi.blogspot.com>) contains poems and commentary on social and political issues. Ms. al-Mallohi does not belong to any political group.

1177. According to information received, on 27 December 2009, Ms. al-Mallohi was summoned to Damascus for interrogation by Syrian Arab Republic's State Security (Branch 279) relating to an article she published on her blog. She was immediately detained without charge. Two days later, on 29 December 2009, members of State Security reportedly went to Ms. al-Mallohi's house and confiscated her computer, CDs, books, and other personal effects. She was held in incommunicado detention at an undisclosed location without charge or access to her family for the first nine months of her detention. Her family was allowed to visit her once at Doma prison in Damascus on 30 September 2010.

1178. On 5 October 2010, it was reported that Ms. al-Mallohi had been charged with spying for a foreign country. On 14 February 2011, Ms. al-Mallohi appeared before Damascus State Security Court in a closed trial, and was sentenced to five years of imprisonment for "divulging information to a foreign State." The court did not disclose any evidence nor details of the reason behind the verdict. The State Security Court's verdict is final and there is no possibility of appeal. Since 30 September 2010, other than during her court appearance, Ms. al-Mallohi is being held in solitary confinement in Doma prison.

1179. Concern is expressed that Ms. al-Mallohi was held in incommunicado detention without charge for nine months, sentenced to five years of imprisonment on unclear charges, and now held in solitary confinement because of articles posted on her blog. While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's Government attention to the right to physical and mental integrity of Ms. Tal al-Mallohi.

#### **Communication received**

1180. At the time this report was finalized, no response to this communication has been received.

**Responses to communications sent earlier** (for ease of reference the communications sent are also reproduced below)

#### **Communication sent**

1181. On 23 December 2009, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Mr. Mustafa Ismail, lawyer, of

Kurdish origin. Mr. Ismail writes frequently about the treatment of Kurds in the Syrian Arab Republic and Turkey for a number of foreign-based websites.

According to the information received:

1182. On 12 December 2009, Mr. Mustafa Ismail was arrested at the Air Force Security Branch in Aleppo, where he went following an order from the local security office in Ain Arab.

1183. On 17 December 2009, members of his family went to the same Air Force Security Branch in Aleppo to look for him. However, they were told that Mr. Ismail was not there and were instead ordered to leave.

1184. During the past few months, Mr. Ismail has been questioned several times by members of different security services such as by the Political Security Branch on 3 October, the Military Security Branch on 5 October and the State Security Branch on 7 and 8 November. During those sessions, questions had reportedly surrounded his work for the media, particularly phone interviews he had given to a European-based Kurdish satellite TV station, Roj TV.

1185. On 11 December 2009, Mr. Ismail had posted an article on the website of Levant News citing the order to report to the Air Force Security Branch in Aleppo and pointing to the numerous times that he has been summoned for questioning to security offices since 2000.

1186. So far, the authorities have not acknowledged that Mr. Ismail is in detention or provided any other explanation.

1187. In light of Mr. Ismail's prolonged incommunicado detention, concern is expressed for his physical and psychological integrity.

#### **Communication received**

1188. By letter dated 29 June 2010, the Government replied to the communication summarized above as follows.

*(Translated from Arabic)*

1189. The Government of the Syrian Arab Republic thanks you for your concern and appreciates your efforts to monitor human rights violations throughout the world. It is pleased to cooperate with you in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and international norms and standards and in accordance with your mandate as set out in the various Human Rights Council resolutions.

1190. With regard to the information that you have received in respect of Mr. Mustafa Isma'il, we wish to clarify that Mr. Isma'il is a Syrian citizen who enjoys his full rights as guaranteed by the Syrian Constitution and under Syrian law. Under Syrian law, all Syrian citizens are granted their rights to freedom and to engage in lawful activities; in return, they are subject to Syrian laws, which impose penalties on any person who commits an unlawful act.

1191. In view of the above, and in view of the unlawful acts committed by Mr. Isma'il, which are punishable under the Syrian Criminal Code, he was arrested on 12 December 2009 by the competent authorities for investigation. He was subsequently transferred to the Office of the Military Public Prosecutor in Aleppo, with the record of the investigation into his case, where it was decided to institute public proceedings against him on the basis of the documents available and the investigation into two offences, namely: (1) Engaging in acts that would harm Syrian relations with a foreign State, under article 278 of the General

Criminal Code; (2) Membership of a prohibited political party, under article 267 of the General Criminal Code.

1192. The case for prosecution and the preliminary investigation file were presented to the military investigating officer in Aleppo, who conducted a judicial investigation into Mr. Isma`il's case and, consequently, decided to remand him in custody for the two offences that he is alleged to have committed. The case remains under consideration.

1193. With regard to the assertion in your letter that Mr. Isma`il was held incommunicado and the concern that you expressed for his physical and psychological health, we wish to reiterate our hope that you take into consideration that most of the sources upon which you rely for information in respect of the Syrian Arab Republic provide you with false information and incorrect facts, and that you attend to those sources accordingly. Mr. Isma`il was not held incommunicado but was treated as other prisoners in the Syrian Arab Republic are treated in accordance with all of the international standards for the treatment of prisoners. We also wish to reassure you with regard to Mr. Isma`il's physical and psychological health that he receives the same medical care in prison as he would if he were not in prison. In prisons, full-time physicians attend to the health of prisoners and provide them with health care and psychological care; any prisoner with a health condition is treated immediately. In this regard, we hope that you will not hesitate to notify us should you receive information that any harm has been done so that those responsible can be held to account, should it be proven.

1194. Lastly, we wish to emphasize that Mr. Isma`il is a Syrian citizen and is protected by the Syrian Constitution and Syrian laws. He is subject to the judicial procedures set out in Syrian criminal law, which is consistent with all international conventions, charters and standards and with the common practice of most countries of the world. We wish to underscore that should an investigating judge find during the investigation that there is sufficient evidence to charge him and bring him to trial before the criminal court, then Mr. Isma`il will be subject to a fair trial before a fair and impartial court. In addition, we wish to reaffirm that we are committed to continued cooperation with you and to replying to all your questions so that we can achieve our common goals of promoting and protecting human rights and fundamental freedoms.

#### **Comments and observations of the Special Rapporteur**

1195. The Special Rapporteur appreciates the response provided by the Government to the communication dated 23 December 2009. She would appreciate receiving updated information on judicial proceedings in relation to this case, in particular on the question whether Mr. Ismail has had access to court to determine the legality of his detention.

#### **Concluding comments and observations of the Special Rapporteur**

1196. The Special Rapporteur thanks the Government of the Syrian Arab Republic for the responses to the communications dated 18 March, 16 July and 13 October 2010. However, she regrets the absence of response to six of the nine communications sent during the reporting period, notably on 9, 11 and 12 November 2010, on 18 January 2011 and on 9 and 18 February 2011. The Special Rapporteur considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of the Syrian Arab Republic to transmit responses to the outstanding communications at the earliest possible date.

1197. She expresses concern at the numerous and increasing reports of human rights violations in Syria drawn to her attention and falling within the scope of her mandate in comparison with the previous reporting period. To illustrate this point, she wishes to underline that nine communications were sent during the reporting period, while two

communications had been sent during the reporting period covered in last year's report. These issues concern *inter alia* allegations of trials of civilians before a military court, violation of due process and fair trial guarantees, threats to lawyers and the freedom of lawyers to carry out legal work.

1198. She wishes to remind the Government of the Syrian Arab Republic that it has the obligation to ensure compliance with the International Covenant on Civil and Political Rights, to which it is a party. Any person arrested and detained should be guaranteed the safeguards provided for in articles 9 and 14 of the aforementioned Covenant, including the right to be promptly brought before a judge, to be informed of the charges, and the right to a fair and public hearing before a competent, independent and impartial tribunal established by law. Finally, she reiterates the importance in ensuring an independent judiciary and the protection and proper role of lawyers, to take into account the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, as well as the the Basic Principles on the Role of Lawyers adopted in Havana, Cuba, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from 27 August to 7 September 1990, in particular principles 16 to 20.

## Tajikistan

### Communication sent

1199. On 18 March 2010, the Special Rapporteur, together with the Chair-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 torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding **Mr. Nematillo Botakuziev**, a human rights defender and representative of the Nookat branch of the Kyrgyz NGO "Justice-Truth" since 2004. "Justice-Truth" provides legal assistance and representation in criminal trials that have human rights concerns.

1200. According to the information received, on 26 February 2010, Mr. Nematillo Botakuziev, a Kyrgyz citizen, reportedly disappeared in Dushanbe, Tajikistan, following a meeting with the local office of UNHCR the same day. Mr. Botakuziev had been hiding in Kyrgyzstan since October 2008, after he had been accused by the authorities of organizing the protest in Nookat, Kyrgyzstan, on 1 October 2008, and wanted him on criminal charges. Mr. Botakuziev arrived in Tajikistan in mid-February 2010 and sought asylum. He was registered with the local office of the UNHCR as an asylum seeker and was last seen in the UNHCR offices in the afternoon of 26 February 2010.

1201. On 4 March 2010, the Regional Office of OHCHR for Central Asia in Bishkek, Kyrgyzstan was informed by several sources that Mr. Bokatziev is allegedly detained by the State Committee on National Security of the Republic of Tajikistan and is under threat of being extradited to the Kyrgyz Republic. On 13 March 2010, Mr. Rashan Gapirov, the Director of the NGO "Justice-Truth" was informed that Mr. Bokatziev was being held in a detention facility on Molodaya Gvardia street in Dushanbe, Tajikistan.

1202. Mr. Botakuziev had allegedly suffered repeated beatings while in detention and his state of health is further weakened due to a recent heart attack.

1203. On 17 March, Mr. Bukatziev's lawyer attempted to get access to him but was refused to see his client.

1204. Concern was expressed that the arrest and detention of Mr. Nematillo Botakuziev may be related to his legitimate activities in defence of human rights, in particular his denunciation of the repression of the Nookat demonstration by Kyrgyz security forces. Further serious concern was expressed regarding the physical and psychological integrity of Mr. Botakuziev in light of his fragile state of health and allegations of torture and ill-treatment while in detention.

#### **Communication received**

1205. At the time this report was finalized, no response to this communication had been received.

#### **Communication sent**

1206. On 29 March 2010, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding **Mr. Nematillo Botakuziev**, a human rights defender and since 2004 the representative of the Nookat branch of the Kyrgyz NGO "Justice-Truth". "Justice-Truth" provides legal assistance and representation in criminal trials that have human rights concerns. A first communication on the case was sent to your Government by several special procedures mandate holders on 18 March 2010.

1207. According to the new information received, Mr. Botakuziev's lawyer was still not permitted to meet with his client in detention. The lawyer was told to request permission from the Prosecutor-General of the Kyrgyz Republic to obtain access to Mr. Botakuziev. Information received further suggests that the extradition papers are being prepared by the authorities so that Mr. Botakuziev be returned to the Kyrgyz Republic prior to 1 April 2010. In addition, Mr. Botakuziev was already questioned with the participation of Kyrgyz authorities.

1208. If returned to the Kyrgyz Republic, Mr. Botakuziev faced a serious risk of being ill-treated and not to be afforded a fair trial. He has been accused by the Kyrgyz authorities of organizing the protest in Nookat, Kyrgyz Republic, on 1 October 2008, and was therefore wanted on criminal charges. At the trial of 32 persons allegedly involved in the events at Nookat, several testified that they had been tortured and ill-treated (reference is made to the urgent appeal of 11 December 2009 by the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment). However, the court neither ordered an investigation of the allegations nor dismissed the evidence defendants said had been obtained under torture. In May 2009, the Kyrgyz Republic's Supreme Court reviewed the case and upheld the verdicts. It did not investigate the defendants' torture allegations.

#### **Communication received**

1209. In a letter dated 29 March 2010, the Government responded to the communication sent on 29 March 2010 indicating that the absence of the Russian version of the mentioned communication was an obstacle to prepare a timely response from the Government of Tajikistan.

#### **Communication sent**

1210. On 19 November 2010, the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal concerning the

situation of **Mr. Ilkhom Ismanov**, a citizen of the Russian Federation, who was arrested and allegedly tortured in the northern Soghd region of the Republic of Tajikistan.

1211. On 3 November 2010, Mr. Ismanov disappeared and his family had no information about his whereabouts. On 4 November 2010, two men reportedly searched Mr. Ismanov's family house without presenting any official document. They reportedly told Mr. Ismanov's wife that he was being held at the Department for the Fight against Organized Crime of the Ministry of Internal Affairs in the city of Khudzhand in the Soghd region of the Republic of Tajikistan.

1212. On 4 November and subsequently on the following days, despite several attempts to visit Mr. Ismanov, his lawyer and a representative of the Centre for Human Rights of Soghd region were reportedly denied access to Mr. Ismanov. Mr. Ismanov's relatives had reportedly been denied access to him but eventually were able to see him twice. It is reported that on 12 November, Mr. Ismanov's lawyer saw him at the court hearing when the judge authorized the extension of his detention.

1213. It is further reported that on 5 November, when Mr. Ismanov's wife and brother went to visit him at the detention facility in Khudjand, a police officer reportedly asked them to bring some ointment for injuries and pain killers. Mr. Ismanov's relatives claimed that he was unable to walk, had several injuries on his neck, his hands were bruised, and his body was wet. It is reported that when Mr. Ismanov's wife asked him to show his feet, the police stopped the visit and escorted the relatives out.

1214. On 11 November, Mr. Ismanov was reportedly transferred to the temporary detention facility of the Ministry of Internal Affairs in the town of Chkalovsk. Mr. Ismanov's relatives and his lawyer have reportedly sent several complaints to the authorities including the Regional Department for the Fight against Organized Crime and the Procurator's Office of Soghd. Mr. Ismanov's relatives did not receive any response to their request for medical examination of Mr. Ismanov which have been addressed to the regional prosecutor's office.

1215. It is reported that on 12 November, during the court hearing, Mr. Ismanov told the judge that he was subjected to electric shocks and boiling water was poured on him while in detention. It is claimed that when Mr. Ismanov offered to show the evidence of torture on his body, the judge ignored the allegations of torture by saying that the lawyer should take up the allegations of torture with the police investigator. It is reported that Mr. Ismanov was charged with "organizing a criminal group."

1216. On 13 November, the court reportedly ordered an investigation into the allegation that Mr. Ismanov had been detained since 3 November and not since 9 November as stated by the police.

1217. In view of the allegations of torture and lack of medical attention to Mr. Ismanov, concern is expressed about his physical and psychological integrity. Further concern is expressed about the lack of investigation into the allegations of torture.

#### **Communication received**

1218. At the time this report was finalized, no response to this communication had been received.

#### **Communication sent**

1219. On 17 February 2011, the Special Rapporteur, together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading

treatment or punishment, sent an urgent appeal concerning the detention and state of health of **Mr. Ilhom Ismanov**.

1220. Mr. Ismanov was the subject of a joint urgent appeal sent by the Special Rapporteur on the independence of judges and lawyers; the Chair-Rapporteur of the Working Group on Arbitrary Detention; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 19 November 2010. In view of the allegations of torture and lack of medical attention, concern was expressed about the physical and psychological integrity of Mr. Ismanov. Further concern was expressed about the lack of investigation into the allegations of torture. To date, no response was received from your Excellency's Government regarding the circumstances of the case of Mr. Ismanov.

1221. According to the new information received, in mid-November 2010, Mr. Ismanov was transferred to a pre-trial detention facility in Khujand, Tajikistan. It is further reported that Mr. Ismanov's lawyer was able to see him on 20 November 2010 for the first time since the court hearing of 12 November 2010. However, she had reportedly not been able to meet him in private. Mr. Ismanov's wife was reportedly allowed to see him briefly in the presence of officers from the State Committee of National Security. It is reported that Mr. Ismanov had difficulty walking and look frightened. Reportedly, neither the lawyer nor Mr. Ismanov's wife have been able to obtain any information as to whether an investigation has been launched into the torture allegations and the allegation that Mr. Ismanov had been detained since 3 November 2010 and not since 9 November 2010 as stated by the police.

1222. It is alleged that Mr. Ismanov has a serious respiratory disease and urgently needs medical examinations, in particular an x-ray of his chest, in order to administer the appropriate treatment. It is reported that SIZO no.2 is not equipped with adequate medical facility to establish Mr. Ismanov's diagnosis and devise a plan for his treatment. It is also alleged that the prison administration of SIZO no.2, where Mr. Ismanov is detained, requested his family to provide medicine for him on several occasions.

1223. In view of the allegations according to which Mr. Ismanov continues to remain with no access to medical care despite his deteriorating state of health, concern is expressed about the physical and mental integrity of Mr. Ismanov. Further concern is expressed about the lack of investigation into the allegations of torture.

#### **Communication received**

1224. At the time this report was finalized, no response to this communication had been received.

#### **Comments and observations of the Special Rapporteur**

1225. The Special Rapporteur regrets the absence of an official response to the four communications sent and referred to above. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of Tajikistan to transmit responses to the concerns raised in the above-mentioned communications in respect of the current situation of Mr. Nematillo Botakuziev and Mr. Ilhom Ismanov and on any investigations undertaken in relation to their case.

## **Tunisia**

#### **Communication envoyée**

1226. Le 11 octobre 2010, la Rapporteuse spéciale, conjointement avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur

spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de M. **Fahem Boukaddous**, journaliste de la chaîne de télévision *Al Hiwar Al Tounisi* et du **site d'information en ligne *Al Badil***.

1227. M. Boukaddous a fait l'objet d'un appel urgent envoyé le 12 janvier 2009 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, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme. Le Gouvernement de son Excellence a été remercié pour sa réponse en date du 31 mars 2009.

1228. Selon les nouvelles informations reçues, le 6 juillet 2010, la Cour d'appel de Gafsa aurait confirmé la peine d'emprisonnement de quatre ans prononcée en première instance par la Chambre criminelle du Tribunal de première instance de Gafsa à l'encontre de M. Boukaddous, pour « participation à une entente visant à préparer et à commettre des agressions contre des personnes et des biens ». M. Boukaddous n'aurait pu assister au prononcé du verdict en raison de son hospitalisation dans la ville de Sousse pour des problèmes respiratoires. Un nombre d'avocats, journalistes et activistes des droits de l'homme auraient été empêchés, de manière semble-t-il injustifiée, d'accéder au Palais de Justice de Gafsa.

1229. Il est allégué que les garanties du droit à un procès équitable n'auraient pas été respectées, des atteintes répétées aux droits de la défense ayant notamment été commises selon plusieurs sources. En l'occurrence, les avocats de M. Boukaddous auraient rencontré des difficultés pour s'entretenir avec leur client avant l'audience. Par ailleurs, les justifications médicales apportées à l'absence de M. Boukaddous n'auraient pas été prises en compte, sous le prétexte allégué d'une vacance du Tribunal au-delà du 15 juillet 2010 ; cette absence justifiée aurait empêché M. Boukaddous de pouvoir s'expliquer directement sur les termes de l'accusation.

1230. Le 14 juillet, M. Boukaddous aurait quitté l'hôpital et aurait été incarcéré le lendemain.

1231. Il est rapporté qu'au début du mois de septembre 2010, la santé de M. Boukaddous se serait dégradée en raison du manque de soins médicaux appropriés. M. Boukaddous souffrirait d'exsudation pulmonaire, d'asthme, d'une inflammation de la gorge et de décomposition de ses dents. Les autorités pénitentiaires auraient refusé de transférer M. Boukaddous dans un hôpital.

1232. De sérieuses craintes ont été exprimées quant à l'intégrité physique et mentale de M. Boukaddous en raison du refus des autorités tunisiennes d'apporter des soins médicaux appropriés à celui-ci. Des craintes ont été renouvelées quant au fait que la condamnation en appel de M. Boukaddous soit liée à ses activités non-violentes de promotion et protection des droits de l'homme. Enfin, des craintes ont également été exprimées que les dysfonctionnements précités lors du procès en appel aient compromis le principe du droit à un procès équitable.

#### **Communication reçue**

1233. Aucune réponse n'a été reçue à ce jour.



### Commentaires et observations de la Rapporteuse spéciale

1234. La Rapporteuse spéciale regrette, au moment de la finalisation du présent rapport, l'absence de réponse à la communication en date du 11 octobre 2010. Elle considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat.

1235. Elle exhorte le Gouvernement tunisien à répondre au plus vite aux craintes exprimées dans sa communication, notamment en indiquant la base légale ayant prévalu à l'arrestation et la détention de M. Boukaddous et comment celle-ci est compatible avec les instruments et standards internationaux en matière de promotion et protection des droits de l'homme contenus, *inter alia*, dans le Pacte international relatif aux droits civils et politiques et la Déclaration sur les défenseurs des droits de l'homme. Elle prie également le Gouvernement de justifier le refus de transférer M. Boukaddous dans un hôpital afin qu'il puisse recevoir des soins médicaux appropriés.

## Uganda

### Communication sent

1236. On 23 September 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, sent an urgent appeal regarding the arrest and current situation of **Mr. Al-Amin Kimathi**, of Kenyan nationality and Executive Coordinator of Muslims Human Rights Forum (MHRF), and **Mr. Mbugua Mureithi**, of Kenyan nationality and a human rights lawyer. Mr. Al-Amin Kimathi has worked to expose and document human rights violations, arbitrary detention and unlawful renditions in the context of counter-terrorism operations in the East and Horn of Africa. Mr. Mbugua Mureithi represents the families of Kenyan suspects transferred to Uganda on allegations of involvement in the 11 July 2010 bombings in Kampala.

1237. According to the information received, on 16 September 2010, the Ugandan police arrested the two Kenyan human rights defenders at the Entebbe International Airport. Both men were travelling to Kampala for the court hearing of Kenyan suspects arrested in connection with the bombings that killed 70 people in Kampala on 11 July 2010.

1238. According to reports received, the two human rights defenders were transferred to the Rapid Response Unit headquarters in Kireka, a suburb of Kampala, where they were reportedly held incommunicado and had no access to a lawyer.

1239. It had been reported that on 18 September 2010 Mr. Mbugua Mureithi was released from police custody in Kampala and immediately expelled to Kenya. Mr. Al-Amin Kimathi was reportedly held incommunicado at the Ugandan police's Rapid Response Unit Headquarters in Kireka, Kampala, without charges or access to legal representation, until 21 September. On this date, it had been reported that Mr. Al-Amin Kimathi was brought before a judge and remanded to the Luzira Maximum Security Prison on charges of murder and attempted murder as well as terrorism-related charges in connection with the bombings that took place in Kampala in July 2010.

1240. Due to their arrest, detention and, in the case of Mr. Mureithi, expulsion, the two men had not had a chance to meet with their clients, who are charged with offences including murder and terrorism, punishable by death under Ugandan law. The court case involving their clients had continued in their absence.

1241. Concern was expressed at the arrest of Mr. Al-Amin Kimathi and Mr. Mbugua Mureithi and at allegations received that their arrest could be linked to their work, respectively as human rights lawyer and in denouncing and documenting unlawful practices by the authorities in counter-terrorism operations. Further concern was expressed about allegations indicating that Mr. Al-Amin Kimathi had no access to a lawyer since the time of his arrest and until he was remanded to the Luzira Maximum Security Prison.

**Communication received**

1242. At the time this report was finalized, no response to this communication has been received.

**Comments and observations of the Special Rapporteur**

1243. The Special Rapporteur regrets the absence of an official response to the communication dated 23 September 2010. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of Uganda to transmit responses to the concerns raised in the above-mentioned communication.

**United States of America**

**Communication sent**

1244. On 21 June 2010, the Special Rapporteur sent an urgent appeal regarding the **disciplinary and criminal charges against Judge Juan José Delgado, of the superior court for criminal matters of the Bayamon judicial region in Puerto Rico.**

1245. According to the information received, Judge Juan José Delgado, acquitted six defendants accused of the killing of an adult and two minors in the so-called “Barrio Pájaros massacre” in Toa Baja. After he acquitted the six defendants, the Judge was immediately subjected to a disciplinary procedure and to a criminal investigation. The criminal and disciplinary procedures against Judge Delgado were ordered by the Justice Secretary, who announced to the press that Judge Delgado had reportedly appeared in a video celebrating his verdict with the defense lawyers in one of Bayamón's restaurant.

1246. During the investigations, the prosecutor indicated that Judge Delgado did not appear in the video and that he had no evidence that the Judge had joined the defense lawyers in their celebrations.

1247. Concern is expressed that the claims against Judge Delgado are unsubstantiated and aimed at damaging his integrity.

**Communication received**

1248. At the time this report was finalized, no response to this communication has been received.

**Comments and observations of the Special Rapporteur:**

1249. The Special Rapporteur regrets the absence of an official response to the communication dated 21 June 2010. She considers response to her communications as an important part of the cooperation with her mandate, and calls upon the Government of the United States of America to transmit responses to the concerns raised in the above-mentioned communication at its earliest convenience.

## Venezuela (Bolivian Republic of)

### Comunicación enviada

1250. El 1 de abril de 2010, la Relatora Especial envió un llamamiento urgente junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, en relación con la **Jueza María Lourdes Afiuni Mora**, quien se encuentra detenida en el Instituto Nacional de Orientación Femenina (INOF) desde el 18 de diciembre del año 2009, después de haber sido transferida desde la Sede de la Dirección General de los Servicios de Inteligencia y Prevención (DISIP, ahora SEBIN) donde permanecía desde su arresto, el 10 de diciembre del año 2009. La Sra. María Lourdes Afiuni Mora había sido objeto de un llamamiento urgente enviado por el Presidente Relator del Grupo de Trabajo sobre la Detención Arbitraria; la Relatora Especial sobre la independencia de magistrados y abogados; y la Relatora Especial sobre la situación de los defensores de los derechos humanos el 16 de diciembre de 2009; comunicación que hasta ese momento no había sido respondida.

1251. De acuerdo con las informaciones recibidas, durante los tres meses que la Jueza María Lourdes Afiuni Mora llevaba privada de libertad, había sido objeto de varios atentados contra su vida por parte de las reclusas del Instituto Nacional de Orientación Femenina; se informó que una proporción importante de las mujeres ahí detenidas habrían sido condenadas a penas de prisión por la Jueza Afiuni Mora. En consecuencia, se expresaron serios temores por su vida e integridad física.

1252. Se informó que las reclusas del Instituto Nacional de Orientación Femenina, en dos ocasiones habrían tratado de quemar viva a la Jueza Afiuni Mora, y en otra ocasión, la habrían tratado de asesinar con un cuchillo. Además, una mujer conocida como sicaria, habría intentado en repetidas ocasiones, agredir a la Jueza Afiuni Mora con hojillas y cuchillos.

1253. Se informó que el 22 de marzo de 2010, día en el cual la primera audiencia para presentar los cargos en contra de la Jueza Afiuni Mora estaba prevista, se canceló dicha audiencia mediante un cartel pegado en la puerta del tribunal, indicando que había despacho, pero no para la causa de la Jueza Afiuni Mora.

1254. Se informó que el mismo día, después de este acontecimiento, el abogado de la Jueza Afiuni Mora pidió el expediente de su clienta en el tribunal, el cual le fue negado. En consecuencia, el abogado intentaría interponer una denuncia en la inspectoría de tribunales del Distrito de Caracas, la cual le fue negada.

### Comunicación recibida

1255. Mediante carta fechada el 28 de julio de 2010, el Gobierno respondió a este llamamiento urgente, incluyendo información adjunta sobre el caso –nota verbal de 28 de julio de 2010, dando respuesta a la comunicación de 17 de marzo de 2010 suscrita por el Presidente-Relator del Grupo de Trabajo sobre la Detención Arbitraria, relacionada con el presente caso—, nota verbal de fecha 28 de julio de 2010, dando respuesta al llamamiento urgente de 16 de diciembre de 2009, que conjuntamente enviaron la Relatora Especial sobre la Independencia de Magistrados y Abogados, la Relatora Especial sobre la situación de los defensores de los Derechos Humanos y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y comunicación de 25 enero de 2005, suscrita por la Directora de medidas cautelares emitidas por la Comisión Interamericana de Derechos Humanos a favor de la Exjueza Afiuni.

1256. En su respuesta, el Gobierno señaló que eran totalmente falsas las informaciones donde se aseguraba que durante los meses que la Sra. Afiuni llevaba privada de libertad,

ésta habría sido objeto de varias agresiones y atentados contra su vida por parte de las reclusas del Instituto Nacional de Orientación Femenina (INOF). Al respecto, se informa que las gestiones para velar por la integridad personal de la Sra. Afiuni comenzaron desde el inicio del proceso penal en su contra, el día 12 de diciembre de 2009, cuando el Juzgado 50° de Primera Instancia en Funciones de Control del Circuito Judicial Penal de la Circunscripción Judicial del Área Metropolitana de Caracas instruyó al Ministerio Público a fin de que ordenara la práctica de un nuevo reconocimiento médico legal a los imputados a fin de establecer las condiciones de salud en las que se encontraban.

1257. Igualmente, se informa que el 18 de diciembre de 2009 los abogados de Afiuni Mora, ejercieron Recurso de Apelación, en contra la decisión de fecha 12 de diciembre de 2009, con resolución judicial del mismo día, emanada del Juzgado 50° de Primera Instancia en Funciones de Control del Circuito Judicial Penal del Área Metropolitana de Caracas, mediante la cual se le decretó Medida Judicial Privativa de libertad por la presunta comisión de los delitos de corrupción propia y abuso de autoridad, favorecimiento para la evasión, asociación para delinquir. Se informó también que la Sala 2 de la Corte de Apelaciones, en su sentencia de 28 de enero de 2010, declaró sin lugar el Recurso de Apelación y negó el otorgamiento de la medida cautelar sustitutiva de la privación de libertad solicitada a favor de Afiuni Mora.

1258. Además, el estado señaló que el 17 de mayo de 2010, tuvo lugar la audiencia preliminar del caso, en la que tras ratificarse la acusación en contra de la Ex-Jueza, se admitiría la acusación y las pruebas presentadas por los fiscales, ordenándose el enjuiciamiento de Afiuni y ratificándose la medida de privación de libertad. Se confirmó que, actualmente el proceso penal sigue su curso normal por ante el Juzgado 26° de Juicio.

1259. Concluye el estado indicando que, por cuanto al señalamiento de que la Ex-Jueza fuera objeto de presuntas menciones injuriosas por parte del Jefe del Ejecutivo, en todo caso, las consideraciones y reacciones del mandatario nacional son muestra de su claro compromiso por la erradicación de la corrupción en todos los niveles y ámbitos del poder público, que además fueron posteriores a la detención decretada, y obedecieron sin duda a la bochornosa actuación de Afiuni Mora en el caso del banquero Eligio Cedeño. Así, el Estado ratificó que la privación de libertad de María Lourdes Afiuni Mora, fue dictada en completa y absoluta observancia de las normas jurídicas nacionales e internacionales aplicables al estado; en razón de los compromisos jurídicos formalmente adquiridos, y en particular, de los que garantizan el derecho a la defensa en todo estado y grado de la investigación del proceso, y que involucra el derecho a la asistencia jurídica, el derecho a ser escuchado, el derecho a un juicio imparcial a cargo de su juez natural y el derecho al debido proceso.

1260. Por cuanto a la integridad física de la Jueza, se informa sobre una comunicación de la Directora Nacional de Servicios Penitenciarios con fecha de 28 de diciembre de 2009 donde se señala que la Sra. Afiuni está recluida en el área de admisión con otras internas, lugar que se utiliza para casos especiales el cual está totalmente separado de las otras áreas de reclusión de manera que allí no existe riesgo de ser agredida por otras internas. Se informa también de otra comunicación de la misma Directora Nacional de Servicios Penitenciarios con fecha de 25 de enero de 2010 donde se señala que no se presentaron amenazas inminentes a la integridad física y a la vida de la Sra. Afiuni y que los rumores de rociar de gasolina en el pasillo que conduce al área de reclusión de la Sra. Afiuni no eran ciertos, por cuanto no utilizan combustible dentro del penal y la sustancia es de prohibida tenencia en el recinto.

1261. También se informa sobre la situación suscitada respecto a la primera petición de la Sra. Afiuni sobre el cambio de celda y se refiere a las actas relevantes que muestran la reubicación de la Sra. Afiuni a la habitación de máxima seguridad; se acuerda el traslado a otros recintos carcelarios de las internas del INOF que tengan informes negativos de

conducta o que hayan podido proferir insultos a las Sra. Afiuni a fin de prevenir algún acto de violencia contra ella; se acuerda la realización de una evaluación por parte de un equipo médico multidisciplinario a los efectos de que preste atención permanente a la mencionada interna.

1262. Asimismo, la Defensoría del Pueblo ha evidenciado las actuaciones realizadas en protección de los derechos humanos de la Sra. Afiuni habiendo practicado inspecciones para velar que, como persona privada de libertad, sea tratada con el debido respeto a la dignidad humana.

1263. Por todo lo anterior, el estado señala dar cuenta de la seriedad demostrada por las instituciones públicas venezolanas en el cumplimiento de su obligación de proteger la integridad física de la Sra. Afiuni, quien no ha sufrido ningún atentado contra su integridad física desde que se encuentra detenida, gozando de las mejores condiciones posibles que pueden brindarse a una persona que se encuentra privada de su libertad.

### **Comentarios y observaciones de la Relatora Especial**

1264. La Relatora Especial agradece la vasta respuesta del Gobierno de Venezuela a la comunicación enviada el 11 de abril de 2010. Sin embargo, la misma no es óbice para que la Relatora Especial reitere su especial preocupación por el contexto de crecientes críticas y denuncias por ataques a la independencia del Poder Judicial en Venezuela. Tanto así, que no escapa de su atención lo que algunos sectores judiciales de Latinoamérica han denominado como “efecto Afiuni”, aludiendo a las presiones, miedo e inclusive terror que existe en algunos de los jueces de Venezuela, por cuanto a que, si no deciden sus causas conforme a los designios del poder político, pueden correr con la misma suerte de la Jueza Afiuni.

1265. La Relatora considera que no es ocioso recordar los Principios Básicos relativos a la independencia de la judicatura, enfatizando los numerales 1 al 6, por cuanto a que la Independencia de la Judicatura debe ser garantizada por el Estado, proclamada en la Constitución y en la legislación de todo el país, y que todas las instituciones, sin excepción alguna, deberán respetar y acatar dicha independencia. Por tanto, los jueces podrán resolver los asuntos sometidos a su consentimiento con plena imparcialidad, basándose en los hechos y consonancia del derecho, sin influencias, presiones, amenazas y ningún tipo de intromisión –directa o indirecta—. Finalmente, recuerda que no deben efectuarse intromisiones indebidas o injustificadas en el proceso judicial.

1266. En tal sentido, continúa preocupando a la Relatora Especial la efectiva imparcialidad que el juicio seguido en contra de Afiuni Mora pueda tener, así como el disfrute de todas las garantías judiciales, y demás elementos que puedan asegurar que su causa sea efectivamente seguida conforme a Derecho, totalmente desapegado de cuestiones o intereses políticos.

1267. Ahora bien, la Relatora valora dos cuestiones que se desprenden de la respuesta estatal. En primer lugar, el reconocimiento tácito sobre el riesgo que la integridad física de Afiuni Mora puede sufrir, esto con la precisión de los esfuerzos del gobierno de Venezuela en relación con la protección a la integridad física de la Jueza Afiuni y reitera la importancia de otorgarle un tratamiento de conformidad con su condición de jueza. En segundo lugar, no solo preocupan las declaraciones que respecto a la Ex-jueza haya vertido el Jefe del Ejecutivo, alarma el hecho de que se encuentre justificación a las mismas, denominándolas como “consideraciones y reacciones como muestra del compromiso por la erradicación de la corrupción”. En primer lugar, aún cuando fuera cierta alguna de las imputaciones hechas en perjuicio de la Sra. Afiuni, tal veracidad tendría que quedar acreditada en la instancia judicial, después de un procedimiento con sus debidas garantías y agotando todos las instancias y recursos legales a tal efecto. Hecho que, hasta el día de hoy no ha ocurrido, por

lo cual, la declaratoria presidencial representa una intromisión a la función jurisdiccional, y una sentencia condenatoria anticipada, en la que asume que la Sra. Afiuni es parte de la corrupción. Aunado a ello, a dicha grave situación ha de sumársele un elemento magnificador, el hecho de que dicha declaratoria fuera formulada públicamente por el mandatario una vez que la Jueza fuera privada administrativamente de su libertad. Y, finalmente ha de hacerse notar, la pública intromisión presidencial, al juzgar, calificar y determinar tajantemente de “bochornosos” los actos desplegados por Afiuni en el ejercicio de su función jurisdiccional.

1268. La Relatora Especial considera importante recordar al gobierno de Venezuela, que una característica *sine qua non* del estado de Derecho es, precisamente, la independencia de los poderes estatales.

## Yemen

### Communication sent

1269. On 1 April 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal regarding the situation of **Mr. Ahmed Mohamed Salem Bamuallim**, a citizen of Yemen born in 1954. He is a resident of Al-Moukalla, neighbourhood of Baaboud and a retired military officer. Mr. Bamuallim was elected to Yemen's National Parliament in 1997, and served as a deputy for the Yemen Congregation for Reform until 2003. During this period he was also a member of the Parliamentary Defense and Security Commission. He is a well-known political opponent and a member of the "Southern Movement" (Al-Harak Al-Janouby).

1270. According to the information received, on 15 April 2009, Mr Bamuallim, in the company of his son, delivered himself to the regional military headquarters following a formal summons by telephone regarding his retirement. He was arrested and detained for 24 hours before being transferred to the Military Intelligence prison in Sana'a where he was secretly held incommunicado in a subterranean prison cell for over a month. He was then transferred to the regular Military prison where he was detained between June 2009 and 19 July 2009, when he was finally transferred to Sana's central prison, where he remains unto this day.

1271. According to the source, Mr. Ahmed Mohamed Salem Bamuallim remains in detention without having been formally charged with an offence; without having received any information on the proceedings initiated against him or on the legal basis of his detention; without access to a lawyer, and without having had the possibility to challenge the legality of his detention before a judicial or other authority.

1272. On 17 October 2009, Mr. Ahmed Mohamed Salem Bamuallim appeared in front of the State Security Court during which he refused to speak unless a lawyer was present. During the initial hearing he was mainly criticized for his involvement in the "Southern Movement" and accused of having violated national integrity and promoting dissension.

1273. Various hearings were to follow, and on 23 March 2010, a Yemeni court sentenced Mr. Ahmed Mohamed Salem Bamuallim to 10 years in prison. The judge said Mr. Bamuallim had been calling for an armed insurrection.

1274. The Constitution of Yemen stipulates that any person accused of a penal offence must be brought before a judge within 24 hours of his arrest. Article 73 of the Criminal Procedure Code of Yemen (Law no. 31 of 1994) establishes that everyone who is arrested must be immediately informed of the reasons for his arrest, must be shown the arrest warrant, must be allowed to contact any person he wishes to inform of the arrest and must be allowed to contact a lawyer. According to the source, none of these guarantees has been

respected in Mr. Bamullim's case, his detention thus being devoid of any justification in Yemeni law.

### **Communication received**

1275. In a letter dated 7 October 2010, the Government provided some information on the case of Mr. Mohamed Salem Bamullim. The latter was detained for being involved in lawful<sup>2</sup> acts. His imprisonment was according to a court decision following a normal trial with the presence of his lawyer Ms. Nadia Al-Khlaifi. However, despite the court order, Mr. Bamullim was released on 17 July 2010 after a pardon issued by the President of the Republic. Therefore, the Government would be grateful if the case of Mr. Bamullim could be clarified by the Working Group on Arbitrary Detention.

### **Comments and observations of the Special Rapporteur**

1276. The Special Rapporteur thanks the Government of the Republic of Yemen for its response and welcomes the information indicating that a pardon was issued by the President and the subsequent release of Mr. Bamullim.

## **Zimbabwe**

### **Communication sent**

1277. On 17 June 2010, the Special Rapporteur, together with the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the case of **Mr. Farai Maguwu**, director of the Zimbabwean non-Governmental organization Centre for Research and Development (CRD). The CRD has documented human rights abuses in the Marange diamond fields, and is involved in the Kimberly Process, an international coalition of Governments, industry and civil society organizations which aims at breaking the links between the diamond trade and the funding of violence.

1278. On 26 May 2010, Mr. Farai Maguwu shared information with an independent monitor for the Kimberly Process in Zimbabwe on alleged human rights abuses in the diamond fields.

1279. On 27 May, armed security agents reportedly raided both the office and home of Mr. Farai Maguwu, and confiscated his passport, computer and other personal belongings. Mr. Farai Maguwu escaped and went into hiding.

1280. On 3 June, Mr. Farai Maguwu handed himself to the Harare Central Police Station, and was immediately arrested.

1281. On 7 June, Mr. Farai Maguwu was charged with communicating information prejudicial to the State. Mr. Farai Maguwu has been denied bail, and remains detained at the Harare Central Police Station. He has further been denied access to his medication to treat a chest and throat infection. A court has reportedly ordered that he be allowed to receive his medication.

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<sup>2</sup> The Special Rapporteur wishes to draw to the attention of the Government that there may have been a mistake in the use of "lawful". Most probably, "unlawful" acts were meant.

1282. During the aforementioned raid, the nephew of Mr. Farai Maguwu, Mr. Lisbern Maguwu, was arrested and was subsequently beaten in custody. Lawyers attempting to meet him received threats from police officers. Mr. Lisbern Maguwu was released on bail after being charged with violence against security agents. He is currently awaiting trial. Since the raid, other members of Farai Maguwu's family have reportedly been interrogated and beaten by police officers. Other CRD staff members went into hiding in fear for their safety.

1283. Serious concern is expressed that the arrest and detention of Mr. Farai Maguwu may be related to his legitimate human rights activities, in the exercise of the right of Mr. Farai Maguwu to freedom of opinion and expression. Further concern is expressed that the arrest and detention of and charges against Mr. Lisbern Maguwu, as well as the acts of ill treatment against him, may be linked to the human rights activities of his uncle, Mr. Farai Maguwu. Finally, serious concern is expressed for the physical and psychological integrity of Mr. Farai Maguwu, members of his family, including Mr. Lisbern Maguwu, and CRD staff members.

#### **Communication received**

1284. At the time this report was finalized, no response to this communication had been received.

#### **Comments and observations of the Special Rapporteur**

1285. The Special Rapporteur regrets the absence of an official reply to the communications sent and calls upon the Government of Zimbabwe to provide at the earliest possible date a substantive answer to the above allegations.

## **IV. Press releases**

1286. During the reporting period, the Special Rapporteur on the independence of judges and lawyers has issued six press statements.<sup>3</sup> A summary of these statements is provided below according to a chronological order.

#### **30 July 2010 - Honduras: Recent dismissal of judges sends message of intimidation, warn UN Special Rapporteurs**

1287. El 30 de julio de 2010, la Relatora Especial sobre la independencia de magistrados y abogados; el Relator Especial sobre la libertad de opinión y expresión; y la Relatora Especial sobre la situación de los defensores de los derechos humanos, advirtieron que la reciente destitución de tres jueces y una magistrada en Honduras "puede tener el efecto de un mensaje intimidatorio a otros jueces y magistrados para que se abstengan de manifestar opiniones diferentes a aquéllas expresadas por las autoridades actuales".

1288. "Esto representaría un ataque inadmisibile contra la independencia de los jueces y magistrados hondureños así como contra las libertades de opinión, expresión, reunión y asociación de los individuos, grupos o instituciones que promueven y protegen los derechos humanos y las libertades fundamentales en Honduras", señalaron los expertos, que siguen con atención el desarrollo de la situación judicial en Honduras.

1289. El 18 de junio de 2010, los jueces Guillermo López Lone, Luis Chávez y Ramón Enrique Barrios y la magistrada Tirza Flores fueron notificados de la decisión de

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<sup>3</sup> This excludes press releases issued prior to country missions and end-of-mission statements.



destitución de la carrera judicial emitida por la Suprema Corte de Justicia por ‘incumplimiento o violaciones graves de sus deberes’. La decisión fue emitida por la Sala Plena de la Corte el 5 de mayo de 2010 y ratificada en las sesiones de Sala Plena de 12 de mayo y 1 de junio de 2010.

1290. “Ninguna de las resoluciones que motivaron la destitución de estos jueces y de la magistrada contiene los fundamentos jurídicos que justifiquen por qué las conductas objeto del procedimiento disciplinario fueron consideradas como graves”, destacaron los expertos de la ONU. “Las destituciones parecen estar relacionadas a la expresión pública del rechazo de estos profesionales de la judicatura a los acontecimientos ocurridos durante la crisis política de junio de 2009, así como a su participación en algunos actos de protesta contra los mismos”.

1291. “Los jueces sólo pueden ser destituidos por razones graves de mala conducta o incompetencia, de conformidad con procedimientos equitativos que garanticen la objetividad y la imparcialidad”, indicaron los expertos en derechos humanos. “Aceptar una invitación a dictar una conferencia, escribir un artículo, presentar un recurso de hábeas corpus en favor del Presidente destituido o participar en manifestaciones públicas no parece responder a estos criterios”.

1292. Se habría también violado el derecho de los jueces destituidos al debido proceso, al haberseles sancionado sin haber sido escuchados y al haberseles impedido participar en las sesiones plenarias en las cuales se acordó o ratificó su destitución.

1293. Los tres jueces y la magistrada impugnaron la decisión de la Corte Suprema ante el Consejo de la Carrera Judicial de Honduras, que se espera se pronuncie en breve sobre las apelaciones.

1294. “Esperamos que el Consejo otorgue a los funcionarios despedidos la posibilidad de ser escuchados y presentar pruebas en una nueva audiencia. Confiamos que este conflicto se pueda resolver de manera positiva y conforme a los estándares internacional en la materia”. “Resulta necesario avanzar en la consolidación de la independencia judicial en Honduras, garantía de la democracia y del Estado de Derecho”, concluyeron los expertos.

### **11 October 2010 - UN experts urge China to respect human rights and release all persons detained for peacefully exercising their rights**

1295. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers added their voices to those welcoming the decision of the Nobel Committee, on Friday, to award the 2010 Nobel Peace Prize to Liu Xiaobo, and urged for his immediate release.

1296. Liu Xiaobo participated in the Tiananmen Square demonstrations in Beijing in 1989, worked as a professor at Beijing Normal University, and co-authored the Charter 08 document which called for multiparty democracy and greater respect for human rights in the country.

1297. “Liu Xiaobo is a courageous human rights defender who has continuously and peacefully advocated for greater respect for human rights in the People’s Republic of China. We welcome the recognition of his work,” stated the experts.

1298. “For many years, we have expressed to the Government of the People’s Republic of China concerns regarding violations of Liu Xiaobo’s fundamental human rights,” noted the experts. “This includes his detention in October 1997 and the sentence of re-education through labour for speaking out about the country’s one-party political system, found to be arbitrary in a decision adopted by the UN Working Group on Arbitrary Detention.”

1299. Most recently, Liu Xiaobo was convicted by the Beijing No.1 Municipal Court for “inciting subversion of State power” and, on 25 December 2009, was sentenced to 11 years in prison and two years’ deprivation of political rights. “Such a harsh sentence for his peaceful activities in drafting and organizing the signing of Charter 08 is a clear violation of international human rights standards on the right to freedom of expression,” the experts stated. They also noted that there were many irregularities with the trial which did not conform to international standards regarding the right to a fair and public hearing.

1300. “On this occasion, we appeal to the Government of the People’s Republic of China to release all persons detained for peacefully exercising their right to freedom of expression and to respect the spirit of the International Covenant on Civil and Political Rights, to which the Government is a signatory,” said the experts. “We encourage the Government to take the final step and ratify this important international instrument.”

### **11 November 2010 - UN experts condemn “brutal summary execution” of teenage girls in Somalia**

1301. The Independent Expert on the situation of human rights in Somalia; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on violence against women, its causes and consequences condemned the recent public execution, by firing squad, of two teenage girls in central Somalia, saying the executions are the latest manifestation of the “appalling human rights crisis that is plaguing the country.”

1302. “We were horrified to learn of the public execution, reportedly carried out by Al-Shabaab insurgents on 27 October in front of hundreds of residents in Beledweyne,” the experts said. “We join the Somali people in condemning, in the strongest terms, these latest brutal summary executions of two young women convicted without any semblance of due process.”

1303. The six experts called on the parties to the conflict “to immediately refrain from committing acts of extrajudicial executions, torture, stonings, decapitation, amputations and floggings as well as other human rights violations, including with regard to freedom of religion.”

1304. The six UN experts, who are appointed by the UN Human Rights Council, said they were deeply concerned that “groups such as Al-Shabaab are taking Somalia back into the stone age.”

1305. “In Mogadishu and in southern and central regions, judicial institutions have ceased to function,” the experts said, noting that human rights organizations have received credible reports that “in areas controlled by insurgent groups, ad hoc tribunals are judging and sentencing civilians to cruel and inhuman punishments, without proper due process, in violation of both Somali and international human rights law.”

1306. They called on all parties to respect their obligations and to protect civilians, noting that “all parties in the conflict are bound to comply with the terms of the Geneva Conventions of 1949 and of customary international humanitarian law, especially Common article 3 which prohibits violence to life and person -- in particular murder of all kinds, mutilation, cruel treatment and torture.”

1307. In Mogadishu, regular indiscriminate attacks in which heavy artillery, mortars, rocket-propelled grenades, heavy machine guns and roadside bombs have been used, as well as targeted assassinations, have caused thousands of deaths and wounded, as well as destruction of property with whole neighborhoods razed to the ground.

1308. The Independent Expert on Somalia, Shamsul Bari, also pointed to constant reports of sexual and gender-based violence, including rape and female genital mutilation, as well as forced child marriages and the lack of educational opportunities for young girls and boys. “Sexual violence continues to rise, not only among the approximately 1.4 million people displaced inside the country, but in other parts of Somali society,” Mr. Bari said.

1309. “It is also extremely sad, and deeply worrying for the country’s future, that only 10 percent of Somali children currently attend school.” Mr. Bari also noted that frequent reports are also coming in of violations of the freedom of religion, including the destruction of places of worship and cemeteries of Sufi Muslim groups.

1310. “We offer our heartfelt condolences to the families and loved ones of all the victims, including the two girls publicly executed in Beledweyne, and call on the international community to never let up on efforts to investigate these unacceptable crimes and prosecute the perpetrators to the fullest extent of the law,” the six experts said.

## **2 February 2011 – UN experts call for moratorium on the death penalty in the Islamic Republic of Iran**

1311. The Special Rapporteur on the independence of judges and lawyer together with the Special Rapporteur on extrajudicial, summary or arbitrary executions warned that there has been a dramatic surge in death sentences in the Islamic Republic of Iran carried out in the absence of internationally recognized safeguards, despite numerous calls by the UN to immediately halt executions.

1312. “We call on the Iranian Government to immediately declare a moratorium on the death penalty in view of the gravity of the situation and the regular disregard of due process guarantees,” urged the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, and the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul.

1313. “Any death sentence undertaken in contravention of a Government’s international obligations is tantamount to an arbitrary execution,” Mr. Heyns stressed. The UN expert noted that in January alone, at least 66 people have reportedly been put to death, with some sources reporting up to 83 executions, the majority on charges of drug trafficking, *moharebeh* (enmity against God) and alleged membership in or contact with a banned opposition group. A large number of the executions of those charged with drug trafficking have reportedly taken place at Vakilabad prison.

1314. “Such a practice is unacceptable,” Mr. Heyns said. “Under international law, the death penalty is regarded as an extreme form of punishment which, if it is used at all, should only be imposed for the most serious crimes, after a fair trial.”

1315. On her part, Ms. Knaul also deplored that “in many cases, people sentenced to death do not have access to legal representation and their families and lawyers are not even informed of the execution.” She pointed out that “the ongoing violations of fair trial guarantees and recurrent application of the death penalty by the judiciary, may be seen as a means to intimidate the population.”

1316. Both UN experts urged the Iranian Government to comply with its international obligations, reiterating the General Assembly resolution 65/226 adopted on 21 December 2010, which called on the Government to abolish executions carried out in the absence of respect for internationally recognized standards.

1317. The Special Rapporteurs reiterated the appeals made to the Iranian authorities by several UN independent experts to allow them to visit the country, and encouraged the Government to respond positively to their request.

### **3 February 2011 - Governments must pay more attention to people's voices**

1318. The Independent Expert on human rights and extreme poverty; Special Rapporteur on the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Chair-Rapporteur of the Working Group on Arbitrary Detention stated that "Recent events in several countries are an expression of the frustration felt by many individuals whose voices have been neglected or ignored by their own Governments.

1319. Over the past several weeks, men and women in many countries, including Belarus, Egypt and Tunisia, have expressed grievances related to, among others, lack of employment opportunities and infringements on the right to an adequate standard of living, including the rights to food and housing, which have been exacerbated by the increasing cost of food and other basic commodities. They have also denounced the denial of their right to participate meaningfully in decision-making, underscoring the indivisibility of all human rights: civil, cultural, economic, political and social.

1320. We are alarmed at increasing limitations on the right to freedom of expression and information imposed by Governments actively seeking to suppress the rising number of voices who wish to be heard. We are particularly concerned by ill-treatment and arbitrary arrests of protesters, journalists, human rights defenders and lawyers. We are disturbed at the major disruptions in communication networks and transmissions of news so essential to the modern world.

1321. The freedoms of peaceful assembly and association are among the most fundamental rights underpinning a democratic society. We applaud the Human Rights Council for having confirmed this by creating a new human rights mechanism and look forward to the appointment of the expert who will be tasked to uphold these rights.

1322. Notwithstanding this, we deeply deplore the tragic loss of lives and injuries as a result, in some cases, of the excessive use of force against peaceful demonstrators. We urge Governments to abide by international standards, including those on the use of force and firearms. Prompt and impartial investigations into any related deaths or injuries are of the utmost importance to bring the perpetrators to justice and protect human rights under the rule of law is paramount.

1323. As the recent turmoil has demonstrated, ignoring the root causes of such protests is unsustainable, and concerted, effective and prompt action must be taken domestically and internationally to provide an avenue for peaceful redress of human rights grievances, including the enjoyment of economic, social and cultural rights. We stand ready to assist the respective countries in any appropriate manner."

### **8 March 2011 - "Implement and enforce," UN experts urge governments to ensure womens' right to equality**

1324. On the International Women's Day centenary, the Special Rapporteur on violence against women, its causes and consequences, together with the Special Rapporteur on housing; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on migrants; Special Rapporteur on trafficking in persons; Special Rapporteur on Palestinian territories; Working Group on people of African descent; and the Working Group on Enforced or Involuntary Disappearances urged States to respect, protect and fulfill women's right to non-discrimination and equality.

1325. “This must be amongst their highest priorities but is too often neglected or subject to inadequate or token efforts,” Ms. Manjoo said in a joint statement with other UN independent experts\*. “The challenge is to move more decisively from an era of rhetorical engagement to one of implementation and enforcement.”

1326. “The human rights of women and girls are an inalienable, integral and indivisible part of universal human rights,” the group of experts said, reminding Governments around the world of their obligations to ensure the realization of women’s rights.

1327. The experts urged States to ensure that laws, policies, programmes and institutional structures ultimately result in the equal enjoyment by women of their civil, political, economic, social and cultural rights.

1328. On International Women’s Day, they also called for the protection of women and girls against discrimination committed by private actors. “Discrimination that takes place within ostensibly private spaces is not beyond the control and regulation of State institutions.”

1329. “While, in many cases, advances have been made in the adoption of standards and the recognition of women’s rights,” the experts said, “the reality of the lives of so many women shows that implementation of standards and commitment on the ground is still unacceptably weak.”

1330. The UN independent experts emphasized that States’ obligations remain applicable even during armed conflict or in states of emergency caused by mankind or natural disasters and without discrimination, to all those within their territory or under their jurisdiction, including refugees, asylum seekers, migrant workers, victims of trafficking and stateless persons.

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