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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

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

Addendum

Summary of cases transmitted to Government and replies received* **

* The present report is circulated as received, and in the languages of submission only, as it greatly exceeds the word limitations currently imposed by the relevant General Assembly resolutions.

** The report is submitted late in order to reflect the most recent information.

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Introduction

1. This report contains a comprehensive account of communications sent to Governments up to 15 March 2008, along with replies received up to the end of April 2008. It also contains responses received to communications that were sent in earlier years.

I. COMMUNICATIONS AND REPLIES

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

A. Violation alleged

3. Violations are classified into the following categories:

(a) Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment (“Death penalty safeguards”);

(b) Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures (“Death threats”);

(c) Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention (“Deaths in custody”);

(d) Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality (“Excessive force”);

(e) Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State (“Attacks or killings”);

(f) Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law (“Violations of right to life in armed conflict”);

(g) Expulsion, refoulement, or return of persons to a country or a place where their lives are in danger (“Expulsion”);

(h) Impunity, compensation and the rights of victims (“Impunity”).

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

B. Subject(s) of appeal

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

C. Character of replies received

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

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

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

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

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

(e) “No response”.

D. Observations of the Special Rapporteur

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

II. TABULATION OF COMMUNICATIONS AND REPLIES

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

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

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

B. “Number and category of individuals concerned”

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

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

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

D. “Character of replies received”

11. See Section I, paragraph 5 above.

ANNEX

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Afghanistan	1 (1 UA)	0	1 male (journalist)	Death penalty safeguards (1)	No response (1)
Algeria	2 (2 AL) ³	1 (1 AL)	1 male	Deaths in custody (2)	Allegation rejected without adequate substantiation (1) No response (1)
Armenia	1 (1 AL)	0	1 male	Deaths in custody (1)	No response (1)
Australia	1 (1 AL) ⁴	0	1 male (indigenous)	Deaths in custody (1)	Largely satisfactory response (1)
Bahrain	1 (1UA)	1 (UA)	1 male (HRD)	Excessive force/ Impunity (1)	Cooperative but incomplete response (1)
Bangladesh	5 (4 AL, 1 UA) ⁵	3 (3 AL)	1 female (journalist) 2 males At least 367 persons 1 male (indigenous) 3 males	Death threats (1) Attacks or killings (2) Deaths in custody (2)	Largely satisfactory response (3) No response (2)

¹ UA=Urgent Appeal; AL=Allegation Letter.

² HRD=Human Rights Defender.

³ Both communications concerned the same case.

⁴ The allegation letter was sent in a prior year, but the Government responded in the current year.

⁵ Two allegation letters were sent in a prior year, but the Government responded in the current year.

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Brazil	7 (3 AL, 4 UA)	1 (AL)	1 male (HRD) 2 males, 1 female 19 males 25 males 1 male (HRD) 1 male (indigenous) 1 female (HRD)	Attacks or killings (2) Attacks or killings/ Death threats (1) Excessive force/ Impunity (1) Deaths in custody (1) Impunity (1) Death threats (1)	Largely satisfactory response (2) No response (4) No response (recent communication) (1)
Chile	1 (1 UA)	1 (1 UA)	1 male (HRD)	Excessive force (1)	Largely satisfactory response (1)
China	1 (1 UA)	1 (1 UA)	1 male	Death penalty safeguards (1)	Largely satisfactory response (1)
Colombia	8 (3 UA, 5 AL) ⁶	4 (2 UA, 2 AL)	12 males (2 minors, 4 indigenous, 2 demonstrators, 3 HRD) 1 female (1 minor)	Attacks or killings (4) Excessive force (1) Attacks or killings/Impunity (1) Impunity/death threats (1) Death threats (1)	Largely satisfactory response (4) Cooperative but incomplete response (4)

⁶ Three allegation letters and two urgent appeals were sent in a prior year, but the Government responded in the current year

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Democratic People's Republic of Korea	1 (1 UA)	0	2 males (soldiers)	Death penalty safeguards (1)	No response (1)
Ecuador	2 (2 AL) ⁷		2 males (2 minors, 1 refugee)	Excessive force (1) Attacks or killings (1)	Largely satisfactory response (2)
Egypt	2 (AL)	1 (1 AL)	2 males 3 males	Deaths in custody (1) Death penalty safeguards (1)	Cooperative but incomplete response (1) No response (1)
Ethiopia	2 (1 UA, 1 AL)	0	193 persons Between approximately 700 and 1300 persons	Excessive force (1) Violations of the right to life during armed conflict (1)	No response (2)
Fiji	1 (1 AL)	0	3 males	Deaths in custody	No response (1)
Guatemala	3 (1 UA, 2 AL) ⁸	3 (1UA, 2 AL)	1 male (HRD) and family 1 male 1 male, 1 female (HRD's) and family	Death threats (1) Impunity (1) Attacks or killings/death threats (1)	Largely satisfactory response (3)
Honduras	1 (UA)	0	2 males (human rights defenders)	Attacks or killings	No response (1)

⁷ One allegation letter was sent in a prior year, but the Government responded in the current year.

⁸ Two allegation letters and one urgent appeal were sent in a prior year, but the Government responded in the current year.

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
India	3 (3 AL)	2	At least 14 persons (demonstrators) At least 25 persons 3 males	Deaths in custody (2) Excessive force (1) Attacks or killings/Impunity (1)	No response (3)
Indonesia	2 (2 AL)	2 (2 AL)	3 males	Deaths in custody (2)	Largely satisfactory response (1) Cooperative but incomplete response (1)
Islamic Republic of Iran	21 (21 UA) ⁹	5 (5 UA)	46 males (10 juvenile offenders, 1 human rights defender) 9 females (4 juvenile offenders)	Death penalty safeguards (21)	Largely satisfactory response (4) Cooperative but incomplete response (2) No response (recent communication) (2) No response (13)
Iraq	2 (2 UA)	0	2 females 3 males	Death penalty safeguards (2)	No response (2)
Israel	1 (1 AL)	0	1 male	Attacks or killings (1)	No response (1)

⁹ Two urgent appeals were sent for the same case. The Government responded to neither of them.

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Jordan	1 (1 AL)	0	1 male	Deaths in custody (1)	No response (1)
Kenya	2 (1 UA, 1 AL)	0	General At least 682 persons	Excessive force (1) Attacks or killings (1)	No response (2)
Kyrgyzstan	2 (2 AL) ¹⁰	1 (1 AL)	2 males (1 foreign national)	Deaths in custody (2)	Largely satisfactory response (1) No response (1)
Liberia	1 AL (1 AL)	0	1 female	Impunity	No response (1)
Libyan Arab Jamahiriya	1 (1 AL)	0	1 male	Deaths in custody (1)	No response (1)
Malaysia	1 (1 AL)	0	5 persons (foreign nationals)	Attacks or killings (1)	Cooperative but incomplete response (1)
Maldives	1 AL (1 AL) ¹¹	1 (AL)	1 male	Deaths in custody (1)	Largely satisfactory response (1)
Mexico	2 (2 AL) ¹²	2 (2 AL)	7 males (demonstrators)	Attacks or killings (1) Excessive use of force (1)	Largely satisfactory response (1) Cooperative but incomplete response (1)
Morocco	1 (1 AL)	0	1 male	Deaths in detention (1)	No response (1)

¹⁰ One allegation letter was sent in a prior year, but the Government responded in the current year.

¹¹ The allegation letter was sent in a prior year, but the Government responded in the current year.

¹² The allegation letters were sent in a prior year, but the Government responded in the current year.

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Myanmar	2 (1 AL, 1 UA)	1 (AL)	Unknown 1 male	Deaths in custody (1) Excessive force (1)	Allegations rejected but without adequate substantiation (1) No response (1)
Nepal	3 (3 AL) ¹³	3 (3 AL)	2 females (minors) 2 males (1 minor, 1 journalist)	Attacks or killings (2) Death threats (1)	Largely satisfactory response (1) Cooperative but incomplete response (1) Receipt acknowledged (1)
Niger	1 (1 AL)	0	At least 21 persons	Attacks or killings (2)	No response (1)
Nigeria	5 (2 UA, 3 AL) ¹⁴	0	Unknown Approximately 25 persons (militants) At least 6 persons (religious minority) 7 males	Death threats (1) Excessive force (1) Attacks or killings (1) Death penalty safeguards (1)	No response (5)

¹³ Two allegations letters were sent for the same case, in a prior and the current year respectively. The Government responded in the current year to both letters. The other allegation letter was also sent in a prior year, but the Government responded in the current year.

¹⁴ One allegation letter concerned a follow-up to the recommendations of the report of the mission to Nigeria.

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Pakistan	5 (1 UA, 4 AL)	1 (1 AL)	2 males 78 persons At least 102, possibly over 300 persons General	Death penalty safeguards (2) Excessive use of force (2) Attacks or killings (1)	Cooperative but incomplete response (1) No response (recent communication) (1) No response (3)
Papa New Guinea	1 (AL)	0	At least 8 persons	Attacks or killings (1)	No response (1)
Philippines	6 (4 AL, 2 UA) ¹⁵	6 (4 AL, 2 UA))	3 females (human rights defenders) 21 males (9 human rights defenders)	Impunity (3) Attacks or killings (2) Impunity/attacks or killings (1)	Largely satisfactory response (2) Cooperative but incomplete response (3) Receipt acknowledged (1)
Russian Federation	1 (1 AL) ¹⁶	1 (1 AL)	4 males	Attacks or killings/impunity (1)	Largely satisfactory response (1)

¹⁵ Two allegation letters were sent in a prior year, but the Government responded in the current year.

¹⁶ The allegation letter was sent in a prior year, but the Government responded in the current year.

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Saudi-Arabia	8 (8 UA)	3 (UA)	11 males (4 migrants, 1 juvenile offender) 1 female (juvenile offender)	Death penalty safeguards (8)	Largely satisfactory response (1) Cooperative but incomplete response (2) No response (5)
Singapore	2 (2 UA)	2 (2 UA)	6 males (5 foreign nationals)	Death penalty safeguards (2)	Allegations rejected but without adequate substantiation (2)
Somalia	2 (AL)	0	Unknown 2 males	Death penalty safeguards (1) Violations of the right to life during armed conflict/Attacks or killings (1)	No response (2)
Sri Lanka	8 (8 AL) ¹⁷	3 (3 AL)	53 males (11 journalists and media workers, 35 humanitarian workers) 3 females (humanitarian workers) 73 persons	Deaths in custody (1) Violations of the right to life during armed conflict (2) Attacks or killings (1) Impunity (3)	Largely satisfactory response (1) Cooperative but incomplete response (2) Receipt acknowledged (3)

¹⁷ One allegation letter concerned a follow-up to the recommendations of the report of the mission to Sri Lanka.

Country	Communications Sent¹	Government Responses Received	Number and Category of Individuals Concerned²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Sudan	4 (3 UA, 1 AL)	2 (UA)	5 males More than 115 persons of unknown sex (20 demonstrators)	Death penalty safeguards (3) Excessive force (1)	Largely satisfactory response (2) No response (2)
Syrian Arab Republic	2 (1 UA, 1 AL) ¹⁸	2 (1 UA, 1 AL)	1 female, 1 male	Impunity (1) Deaths in detention (1)	Largely satisfactory response (1) Cooperative but incomplete response (1)
Thailand	3 (1 UA, 2 AL) ¹⁹	2 (1 UA, 1 AL)	3 males	Death penalty safeguards (1) Deaths in custody (1) Creation of an Independent Committee to investigate extrajudicial killings (1)	Largely satisfactory response (1) Receipt acknowledged (1) No response (1)
United Kingdom	1 (1 AL)	1 (1 AL)	1 male (foreign national)	Expulsion	No response (1)

¹⁸ The urgent appeal was sent in a prior year, but the Government responded in the current year.

¹⁹ The urgent appeal was sent in a prior year, but the Government responded in the current year.

Country	Communications Sent ¹	Government Responses Received	Number and Category of Individuals Concerned ²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
United States of America	6 (1 UA, 5 AL) ²⁰	2 (2 AL)	7 males (1 foreign national) 90 persons of unknown sex	Impunity (1) Violations of the right to life during armed conflict /Impunity (1) Violations of the right to life during armed conflict (2) Deaths in custody (1) Death penalty safeguards (1)	Largely satisfactory response (1) No response (5)
Uzbekistan	1 (1 UA) ²¹	0	1 male	Death penalty safeguards (1)	Largely satisfactory response (1)
Bolivarian Republic of Venezuela	2 (1 UA, 1 AL) ²²	2 (1 UA, 1 AL)	5 males (3 minors) 1 female	Death threats (2)	Largely satisfactory response (1) Cooperative but incomplete response (1)
Viet Nam	2 (1 UA, 1 AL)	2 (1 AL, 1 UA)	5 males	Death penalty safeguards (1) Deaths in custody (1)	Largely satisfactory response (1) Cooperative but incomplete response (1)

²⁰ One allegation letter was sent in a prior year, but the Government responded in the current year.

²¹ The urgent appeal was sent in a prior year, but the Government responded in the current year.

²² Both communications were sent in a prior year, but the Government responded in the current year.

Country	Communications Sent¹	Government Responses Received	Number and Category of Individuals Concerned²	Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened	Character of Replies Received
Yemen	5 (5 UA) ²³	5 (5 UA)	4 males (2 juvenile offenders) 1 female (1 juvenile offender)	Death penalty safeguards (5)	Largely satisfactory response (3) Cooperative but incomplete response (2)
Zimbabwe	3 (3 AL) ²⁴	3 (3 AL)	2 males (1 media worker) Between at least 11 and 13 persons	Excessive force (2) Impunity (1)	Largely satisfactory response (1) Allegations rejected but without adequate substantiation (1)

²³ Three urgent appeals were sent in a prior year, but the Government responded in the current year.

²⁴ Two allegations letters were sent for the same case. The Government responded to both letters.

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Afghanistan: Death Sentence of Sayed Perwiz Kambaksh

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 28 January 2008 sent with the Special Rapporteur on freedom of religion or belief, Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

We would like to draw the attention of your Government to information we have received regarding Mr Sayed Perwiz Kambaksh, a student and journalist at a local newspaper in the city of Mazar-i-Sharif.

According to the information received:

On 22 January 2008, Mr. Kambaksh was sentenced to death on blasphemy charges by the city court of Mazar-i-Sharif in a trial reportedly conducted in camera and without the presence of a defence lawyer. The blasphemy charges are related to a report that Mr. Kambaksh printed off the internet and distributed to other journalism students at Balkh University, which was considered by the judges as having “distorted Quran verses” and “humiliated Islam”.

According to reports, Mr. Kambaksh’s sentence may be related to articles written by his brother and published by the Institute of War and Peace Reporting criticizing Balkh provincial authorities for corruption and abuse of power.

While we do not wish to prejudge the accuracy of these allegations regarding this specific case, it is our view that the death penalty as applied in this case does not fall within the category of the “most serious crimes” for which international law countenances its possible application. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984). In interpreting Article 6(2) of the International Covenant on Civil and Political Rights, the Human Rights Committee (HRC) has consistently rejected the imposition of a death sentence for offences that do not result in the loss of

life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in the last report to the Human Rights Council of the Special Rapporteur on extrajudicial, summary or arbitrary executions, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

We would also like to refer your Excellency's Government to the International Covenant on Civil and Political Rights, to which your Government is a party, and in particular Article 14 1), which states that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". We respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" allows no derogation. A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect we would like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in particular principle 8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

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

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights. In this regard we would like to stress the risk that efforts to combat blasphemy may be manipulated for purposes contrary to human rights and that any blasphemy legislation should not be used to censure all inter-religious and intra-religious criticism (see E/CN.4/2000/65, para. 111 and A/62/280, paras. 75-77).

We also deem it appropriate to make reference to the principle enunciated, inter alia, by the Commission on Human Rights in its Resolution 2005/38, that the authorities should not resort to criminal laws and punishment for media related offences as these are deemed disproportionate to the gravity of the offence and are incompatible with international human rights law.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. If the above facts are accurate, please provide details of any further developments in this case, inter alia if an appeal has been lodged.
3. Please provide the legal basis upon which Mr. Kambaksh was sentenced to death and how this is compatible with international norms and standards such as the rights to a fair trial and to freedom of opinion and expression, as contained, inter alia, in the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights.

Algérie: Mort en détention de Mounir Hammouche

Violation alléguée: Mort en détention

Objet de l'appel: 1 homme

Caractère de la réponse: Allégation rejetée sans preuve adéquate

Observations of the Special Rapporteur

Le Rapporteur Spécial apprécie les renseignements préliminaires fournis par le Gouvernement Algérien relatif au cas de Mounir Hammouche. Le Rapporteur Spécial note qu'au regard des informations recues qu'il est difficile d'accepter la thèse selon laquelle la victime succombé à une asphyxie mécanique par pendaison sans qu'aucune preuve substantielle n'ait été fournie pour étayer cette affirmation, notamment le rapport d'autopsie.

Lettre d'allégation envoyée le 20 février 2007 avec le Rapporteur spécial sur la torture

Nous souhaitons attirer votre attention sur le récent décès en détention de M. **Mounir Hammouche** le 29 décembre 2006. D'après les renseignements reçus :

M. Hammouche a été arrêté une première fois à Ain Taghrout, Wilaya de Bordj Bou Arreridj, le jeudi 20 décembre 2006 vers 20 heures à la sortie de la mosquée de la ville par plusieurs personnes armées et en tenue civile circulant à bord d'un véhicule de marque Peugeot 406 de couleur grise et immatriculée à Alger.

Conduit dans une caserne militaire relevant du Département du renseignement et de la sécurité (DRS) il lui aurait été reproché « de ne pas faire la prière dans la mosquée la plus proche de son domicile », et également « le fait qu'il portait une barbe ainsi qu'une tenue vestimentaire islamique ». Il a ensuite été libéré le lendemain, 21 décembre 2006.

Deux jours plus tard, le 23 décembre, M. Hammouche a de nouveau été enlevé par les mêmes personnes circulant à bord du même véhicule toujours à la sortie de la mosquée après la dernière prière du soir. Messieurs Antar Zaïbet, Fares Messahel, Walid Laggoune et Mounir Rezazga ont également été arrêtés dans les mêmes circonstances et conduits à la caserne du DRS de Constantine où ils auraient fait l'objet de tortures et de mauvais traitements.

Le 29 décembre au soir, les services de sécurité ont avisé la famille de M. Hammouche que celui-ci « était décédé lors de sa garde à vue ». Il a été également déclaré à la famille que celui-ci « s'était probablement suicidé » et « qu'une autopsie avait de toute façon été pratiquée » et « qu'ils pouvaient enterrer le corps ».

Le corps de la victime a été restitué dans la soirée à la famille. Celui-ci portait de nombreuses traces de tortures, dont une blessure au niveau de la tête ainsi que des ecchymoses au niveau des mains et des pieds, ce qui laisse à penser que M. Hammouche serait décédé à la suite de tortures subies lors de sa garde à vue. Le 30 décembre, la famille a procédé à l'enterrement du corps sous surveillance policière.

Les quatre hommes arrêtés en même temps que M. Hammouche ont été présentés par le département du renseignement et de la sécurité de Constantine au procureur de la république du tribunal de Bordj Bou Arreridj, lequel a requis l'ouverture d'une information judiciaire pour « apologie du terrorisme » conformément à l'art. 87 bis 4.- Ordonnance n° 95-11 du 25 février 1995.

Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous aimerions attirer l'attention de votre Excellence sur les principes fondamentaux applicables à ces faits. L'article 6 du Pacte international relatif aux droits civils et politiques contient le droit de ne pas être arbitrairement privé de la vie. L'article 7 du même Pacte et l'article 1 de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants interdisent la torture et les peines ou traitements cruels, inhumains ou dégradants.

Les faits relatés ci-dessus indiquent que la victime a été vue vivante pour la dernière fois lorsqu'elle était sous l'autorité des forces de sécurité du Gouvernement de votre Excellence. Dans ces circonstances, le droit international des droits de l'homme établit une présomption de responsabilité de l'Etat réfutable pour les violations du droit à la vie et à l'intégrité physique et morale.

De même, l'article 12 de la Convention contre la torture requiert que les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis sur tout territoire

sous sa juridiction et l'article 7 requiert les Etats partie de soumettre les auteurs présumés d'actes de torture à ses autorités compétentes pour l'exercice de l'action pénale. La Commission des droits de l'homme a souligné dans sa résolution 2005/39 (paragraphe 3) que « toutes les allégations faisant état d'actes de torture ou d'autres peines ou traitements cruels, inhumains ou dégradants doivent être examinées sans délai et en toute impartialité par l'autorité nationale compétente, que ceux qui encouragent, ordonnent, tolèrent ou commettent de tels actes doivent en être tenus pour responsables et sévèrement punis, y compris les responsables du lieu de détention où il est établi que l'acte interdit a été commis » ; elle note à cet égard que « les Principes relatifs aux moyens d'enquêter efficacement sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et d'établir la réalité de ces faits (Principes d'Istanbul) constituent un moyen utile de combattre la torture ».

Comme indiqué par les « Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et moyens d'enquêter efficacement sur ces exécutions » résolution 1989/65 du 24 Mai 1989, le droit international exige des Gouvernements qu'une enquête approfondie et impartiale sera promptement ouverte dans tous les cas où l'on soupçonnera des exécutions extrajudiciaires, arbitraires et sommaires » (Principe 9). Comme indiqué par la Commission des droits de l'Homme dans sa résolution 2005/34 (paragraphe 4), ceci comprend l'obligation d'identifier et de traduire en justice les responsables, ..., d'indemniser comme il convient, dans un délai raisonnable, les victimes ou leur famille, et d'adopter toutes les mesures nécessaires, notamment les mesures légales et judiciaires, afin de mettre un terme à l'impunité et d'empêcher que de telles exécutions ne se reproduisent ». Nous souhaitons souligner que, en raison de la responsabilité présumée de l'Etat en cas de morts en détention, celui-ci reste dans l'obligation de verser une réparation financière aux membres de la famille des victimes même dans l'hypothèse où les circonstances du décès et l'identité des personnes responsables n'ont pu être établies.

Nous prions votre Gouvernement de prendre toutes les mesures nécessaires pour diligenter des enquêtes sur les violations perpétrées et de traduire les responsables en justice. Nous prions également votre Gouvernement d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

Il est de notre responsabilité, en vertu du mandat qui nous a été confié par la Commission des Droits de l'Homme et prolongé par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des Droits de l'Homme, nous serions reconnaissants au Gouvernement de Votre Excellence de ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?
2. Au cas où une plainte a été déposée, quelles suites lui ont été données ?
3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.

4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs de la violence.
5. Veuillez indiquer si la famille de la victime a été indemnisée.

Réponse du gouvernement de l'Algérie du 26 juin 2007

Le Gouvernement a confirmé les faits et indiqué que l'autopsie entreprise par M. Benharkat, médecin chef du service de médecine légale de l'Hopital Universitaire de Constantine conclut que la mort de M. Hammouche était « consécutive à une asphyxie mécanique par pendaison » et que « cette pendaison est considérée comme suicide, jusqu'à preuve du contraire ».

Lettre de suivi envoyée le 3 August 2007 avec le Rapporteur spécial sur la torture

Nous tenons à vous remercier pour votre lettre concernant le cas de M. Hammouche du 26 juin 2007, dans laquelle vous avez indiqué que l'autopsie entreprise par M. Benharkat, médecin chef du service de médecine légale de l'Hôpital Universitaire de Constantine conclut que la mort de M. Hammouche était « consécutive à une asphyxie mécanique par pendaison » et que « cette pendaison est considérée comme suicide, jusqu'à preuve du contraire ». Nous reconnaissons que dans cette affaire, les autorités ont rapidement pris des mesures visant à assurer l'accomplissement des obligations qui découlent de l'article 12 de la Convention contre la torture, qui requiert que les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis, et de l'article 7 de la même Convention, qui requiert que les Etats parties soumettent les auteurs présumés d'actes de torture à leurs autorités compétentes pour l'exercice de l'action pénale.

A cet égard, nous voudrions vous prier de nous fournir ce rapport d'autopsie et rappeler que le droit international des droits de l'homme établit une présomption irréfragable de responsabilité de l'Etat pour les violations du droit à la vie et le droit à l'intégrité physique et morale (voir aussi le récent rapport du Rapporteur spéciale sur les exécutions extrajudiciaires, sommaires ou arbitraires à l'Assemblée générale, A/61/311, paragraphe 49 à 54). La raison de cette présomption a été énoncée par le Comité des droits de l'homme dans l'affaire *Dermit Barbato c. Uruguay* (communication no. 84/1981 du 21/10/1982, paragraphe 9.2). La conclusion du Comité des droits de l'homme se lisait comme suit :

« Le Comité ne peut se prononcer de façon définitive sur la question de savoir si Hugo Dermit s'est suicidé, s'il a été poussé au suicide ou s'il a été tué par des tiers pendant sa détention, mais il est obligé de conclure qu'en tout état de cause, les autorités uruguayennes sont responsables, soit par action, soit par omission, de n'avoir pas pris les mesures voulues pour protéger la vie de l'intéressé, comme le paragraphe 1 de l'article 6 du Pacte leur en fait l'obligation. »

Il est de notre responsabilité, en vertu du mandat qui nous a été confié par la Commission des droits de l'homme et par les résolutions de l'Assemblée générale et assumé par le Conseil des droits de l'homme, de solliciter votre coopération pour tirer

au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ce cas au Conseil des droits de l'homme, nous serions reconnaissants à votre Gouvernement d'indiquer comment votre Gouvernement assure que la présomption irréfutable de responsabilité de l'Etat évoqué ci-dessus est respectée dans ce cas particulier.

Armenia: Death in Custody of Levon Gulyan

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 30 May 2007 sent with the Special Rapporteur on the question of torture

We would like to bring to the attention of your Excellency's Government information that we have received regarding the death in custody of Mr. Levon Gulyan, an Armenian citizen aged 30.

According to the information we have received, Mr. Gulyan was called to a police station in Yerevan several times between 10 and 12 May to testify as a witness in connection with a murder. On 12 May 2007, he was transferred to the police headquarters in Yerevan around 13.00. Four hours later he was found dead.

When announcing that Mr. Gulyan had died, the police claimed that Mr. Gulyan had died either while trying to escape from the room where he was held by jumping from the third storey window, or that he had decided to commit suicide. However, marks of ill-treatment and bruises that are unlikely to stem from jumping or falling out of a window were discovered on his body.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Government's attention to the fundamental principles applicable under international law to this case. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (1990)):

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

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

We understand that an autopsy on the body of Mr. Gulyan has been conducted and that a preliminary investigation has been initiated. We urge your Government to complete the inquiry into the circumstances surrounding the death of Mr. Gulyan expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate Mr. Gulyan’s family.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken against any police officers allegedly responsible for Mr. Gulyan’s death. Have disciplinary or administrative sanctions been imposed on them?

4. Please indicate whether compensation has been paid to the family of Mr. Gulyan.

Australia: Death in Custody of Mulrunji

Violation alleged: Death in custody

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

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur:

The Special Rapporteur appreciates the information provided by the Government of Australia with respect to the status of the investigation into the death of Mulrunji and the steps taken to prevent the recurrence of such an incident.

Follow-up letter dated 17 October 2006 (to an allegation letter sent on 21 December 2004)

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 28), relating to the death in custody of Cameron Doomadgee (Mulrunji) in a cell at the Palm Island police station in November 2004. In its response, your Excellency Government informed that the case was being investigated.

As further indicated in my observations I have made in my report, I would be grateful if your Government could provide me with the results of the various investigations under way as well as with detailed information on any penal or disciplinary sanctions that were imposed. I would also be interested in getting information relating to any compensation provided to the family of Mulrunji.

I would appreciate a response within sixty days. I undertake to ensure that your Government's response is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

Response from the Government of Australia dated 16 February 2007

The results of various investigations under way

The Office of the Queensland State Coroner delivered its findings on the inquest on 27 September 2006. A copy of the Coroner's findings was attached to the Government's response. The Queensland Government tabled its response to the findings in Parliament on 2 November 2006. The Queensland Government supports in-principle the recommendations made by the Deputy State Coroner, some of which have already been implemented. For example:

- The coroner recommended a re-emphasis of the principle that police should use arrest as a last resort. The Queensland Government has always supported this principle. The Police Powers and Responsibilities Act 2000 will be amended to

insert an example to reinforce the principle. The Queensland Police Service's Operational Procedures Manual will be likewise amended. Police training in arrest and custody issues, particularly relating to Indigenous people, will also be reviewed. The Queensland Police Service has conducted a review of all training relevant to the Acting State Coroner's comments. The review identified some gaps in training together with proposed strategies to address those gaps. The review suggested that no major changes are required however improvements could be made to the existing packages. These improvements will be progressed as a matter of priority.

- The Coroner recommended enhanced diversionary services on Palm Island. The Queensland Government has already established a cell visitors' program. An integrated diversionary services model, including community patrols, will be developed in consultation with the community. The Government has also approved \$496,000 over three years for a cell visitor program to be operated by the Palm Island Men's Business Group Aboriginal and Islander Corporation. This commenced in June 2006.
- The Coroner recommended improved assessment and monitoring of watch-house detainees. The Queensland Police Service will review current processes with advice from relevant departments and Indigenous groups. Amendments to the Queensland Police Service Operational Procedures Manual relating to inspection and assessment of violent, aggressive or non-cooperative prisoners have been developed and approved. In consultation with the Director of Queensland Health's Clinical Forensic Medicine Unit and other relevant health professionals, the Queensland Police Service will review the current process of police assessing prisoners. The review will include an evaluation of policies and procedures of other Australian Police Services. These outcomes will be reflected in the Operational Procedures Manual. The Queensland Police Service will conduct an audit of first aid and resuscitation equipment in watchhouses and review existing training in its use. The Queensland Police Service will continue negotiations with the Queensland Ambulance Service in relation to the ongoing provision of First Aid Training and will examine options for expanding the provision of such training to all officers in 'positions of risk', particularly those in watchhouses.
- The Coroner recommended a range of improvements to investigations of deaths in custody. The Queensland Police Service had previously entered into a memorandum of understanding with the State Coroner and the Crime and Misconduct Commission about the investigation of custodial deaths. The service will seek to review the memorandum of understanding to take account of the coroner's findings.
- The government remains committed to working with the Palm Island community- and Indigenous people generally- to avoid similar tragedies in the future.

A Steering Committee has been established by the Queensland Commissioner of Police to manage and oversee implementation of the Coroner's recommendations.

On 14 December 2006 the Queensland Director of Public Prosecutions (DPP) announced that no criminal prosecution would be instituted against Senior Sergeant

Hurley, the police officer at the centre of the Palm Island inquiry. After reviewing all the evidence provided to the Deputy State Coroner, and in addition to pursuing additional lines of inquiry and evidence, the DPP indicated that the evidence was not capable of proving that Senior Sergeant Hurley was criminally responsible for the death of Mulrunji.

The DPP subsequently offered to provide her file to the Queensland Attorney-General and Minister for Justice, the Honourable Kerry Shine MP. This offer was accepted and the Attorney-General instructed the Crown Solicitor to commission a second opinion on the matter from the Honourable Sir Laurence Street, AC KCMG QC.

Sir Laurence is a former Chief Justice of the Supreme Court of New South Wales and Lieutenant-Governor. Sir Laurence was assisted by Brisbane barrister Mr Peter Davis SC.

Sir Laurence's opinion has been received, and on 26 January 2007, Attorney-General Shine announced that Sir Laurence believed there is sufficient admissible evidence to support a charge of manslaughter against Senior Sergeant Hurley and that there is a reasonable prospect of a conviction.

The Queensland Attorney-General accordingly instructed the Crown Solicitor to take the necessary steps to initiate a prosecution against Senior Sergeant Hurley as soon as possible.

Information on any penal or disciplinary sanctions that were imposed

As indicated above, the Queensland Crown Solicitor has been instructed to take the necessary steps to initiate a prosecution against Senior Sergeant Hurley as soon as possible. On 30 January 2007, Attorney-General Shine announced that Brisbane barrister Peter Davis SC will head the prosecution of Senior Sergeant Hurley, assisted by barristers David Kent and Jonathan Horton. The Attorney-General stated that he was awaiting advice from the Crown Solicitor about the appropriate manner in which the proceedings should be initiated, that he expected to receive this advice in the coming days and that he would make an announcement thereafter.

Senior Sergeant Hurley has been suspended from duty. On 5 February 2007, an ex officio indictment charging Senior Sergeant Hurley with manslaughter and assault was presented in the Queensland Supreme Court. The matter was adjourned for mention to the Supreme Court on 16 March 2007. Senior Sergeant Hurley was not arraigned and was granted bail.

Information relating to any compensation provided to the family of Mulrunji.

No compensation has been paid to the family of the deceased. However, Mulrunji's family was granted legal assistance from Legal Aid Queensland for representation at the coronial inquest.

(Annex : Office of the State Coroner – Finding of inquest)

Bahrain: Deaths During Demonstrations of 2007

Violation alleged: Death due to excessive use of force; Impunity

Subject(s) of appeal: 1 male (human rights defender)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Bahrain with respect to the death of Ali Jassim Meki and would request that he be provided with the final report of the medical commission on the cause of death.

Urgent appeal dated 10 January 2008 sent with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding the death of Mr Ali Jassim Meki, human rights defender with close links to the HAQ Movement of Liberties and Democracy, and the arrest and detention of the following eleven human rights defenders: Mr Shaker Mohammed Abdul-Hussein Abdul-Aal, Mr Abdullah Mohsen Abdullah Saleh, Mr Maytham Bader Jassim Al-Sheikh, Mr Majid Salman Ibrahim Al-Haddad, Mr Ahmad Jaffar Mohammed Ali, Mr Hassan Abdulnabi, Mr Nader Ali Ahmad Al-Salatna, Mr Hassan Abdelnabi Hassan, members of the Unemployment Committee, as well as Mr Najji Ali Fateel, member of the Bahrain Youth Society for Human Rights, Mr Mohammed Abdullah Al Sengais, head of the Committee to Combat High Prices, and Mr Ebrahim Mohamed Amin-Al-Arab, founding member of the Martyrs and Victims of Torture Committee. They are reportedly all being detained at the Criminal Investigations Department, (CID) in Adliya. Mr Hassan Abdulnabi was the subject of a joint urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 14 December 2005. According to information received:

On 17 December 2007 a demonstration was held in the Sanabis area, organised to commemorate victims of torture in the past. The demonstration was violently dispersed by members of the riot police and of the special security force. Tear gas and rubber bullets were employed by security forces and some participants were beaten.

After the demonstration, Mr Ali Jassim Meki returned to his home, where his condition rapidly deteriorated. He died some hours later on his way to hospital. The autopsy subsequently conducted by government-assigned doctors stated that he had died of natural causes. Mr Ali Jassim Meki's family requested a second opinion of an independent specialist, but was reportedly informed that there was none available in the country.

Following this, and other similar demonstrations, a number of people, including at least the aforementioned eleven human rights defenders, were arrested between 21 and 28 December 2007. All of them have been accused of having taken part in an 'illegal gathering and rioting' and of 'theft of a weapon and ammunition and possession of a weapon and ammunition without permission'. For the first ten days of their detention they were denied access to their lawyers, and interrogations carried out inside the detention chambers and at the Public Prosecutor's office were conducted without the presence of a lawyer. The Public Prosecutor is refusing to pass a copy of the case files, detailing the charges, to a group of lawyers defending the activists.

Some of the human rights defenders have been ill-treated and possibly tortured while in detention. Visitors from human rights organizations have been refused access.

Concern is expressed for the physical and psychological integrity of the above-mentioned eleven human rights defenders while in detention. Further concern is expressed that the death of Mr Ali Jassim Meki and the arrest, detention and alleged ill-treatment of the eleven human rights defenders may be directly related to their work in defence of human rights.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We would like to draw your Government's attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In this connection, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human

rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We also consider it appropriate to bring to your Government’s attention the principles governing the lethal use of force in the dispersal of protests under international law.

- article 6 of the International Covenant on Civil and Political Rights, to which Bahrain is a party, provides that no one shall be arbitrarily deprived of his or her life. The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in themselves binding law, provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces facing allegedly violent crowds, namely by putting forward the twin safeguards of necessity and proportionality in the use of force.

In particular, Article 3 of the Code of Conduct for Law Enforcement Officials states: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that law enforcement officials, in carrying out their duties, shall as far as possible apply non-violent means and shall only use force in exceptional cases including self-defence or defence of others against the imminent threat of death or serious injury. Such force must be proportional to these objectives, the seriousness of the crime and must minimize damage and injury. Force may only be used when less extreme means are insufficient. Of particular relevance in the present context are principles 12 to 14 which prohibit the use of force against participants in lawful and peaceful assemblies. Force may only be used to the minimum extent necessary in the dispersal of unlawful assemblies.

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

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to those held in detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the details, and where available the results, of any investigation, autopsies or other medical examinations and judicial or other inquiries carried out in relation to the death of Mr Ali Jassim Meki and how they complied with international standards.
5. Please provide details with regard to the charges that have been brought against the human rights defenders and state the legal basis for their detention as well as the legal grounds for the refusal of access to legal representatives.

Response from the Government of Bahrain dated 25 February 2008

The Kingdom of Bahrain affirmed its desire to guarantee the right of all persons to hold opinions without interference and the right to freedom of expression by peaceful means in accordance with the International Covenant on Civil and Political Rights, the Constitution and the law. The Kingdom abides by all the international standards on the protection of human rights, including the rights of detainees lawfully arrested in connection with a case.

The authorization of demonstrations and gatherings is governed by Act No. 32 of 2006, amending Legislative Decree No. 18 of 1973 on public meetings, demonstrations and gatherings. In 2007, a total of 324 demonstrations and gatherings were held; prior notice was given for 104 of these events and no notice was given for 220; most of the unauthorized demonstrations and gatherings were not halted or prevented. The Government of the Kingdom affirms its ongoing commitment to allowing peaceful demonstrations, provided they are held in accordance with the law and participants do not engage in mob unrest or rioting punishable by law.

The rioting that occurred on 17 December 2007 during illegal gatherings and demonstrations coincided with the Kingdom's celebrations for the glorious national holiday, which is observed on 16 and 17 December every year, and endangered the lives and property of people celebrating the holiday. Some civil society associations and members of the Chamber of Deputies alleged that the police used excessive force in dealing with these events, and some claimed that the persons detained were tortured. The Minister for Internal Affairs explained the position to the Chamber of Deputies on 15 January 2008 in reply to a member's question about the necessary guarantees to safeguard human rights. He confirmed that the police had not infringed the applicable legislation and regulations. The Minister's replies were completely transparent and frank and placed all the facts before the Chamber of Deputies. The Minister assured those present that the general policy of the Ministry was based on respect for human rights. In addition, Ministry officials confirmed that the police had not used excessive force against the rioters and that the detainees had been taken to a forensic medical examiner, who had confirmed that none of them had been tortured and that all the measures taken with respect to them were in accordance with the law.

This reply will clarify all the circumstances surrounding the death of Mr. Ali Jasim Mohamed Maki, the reasons for the arrest of several individuals for offences punishable by law, and the measures taken with respect to them, as follows.

The assertions in the urgent appeal in regard to the death of Mr. Ali Jasim Mohamed Maki, and the events that preceded and followed it are not accurate: the demonstrators not only gathered illegally but were also carrying iron spits and Molotov cocktails. They set a police car on fire and stole guns from it, and they also attempted to kill police officers, as some of the accused persons admitted when questioned by the Department of Public Prosecutions. No complaints have been lodged with the Department of Public Prosecutions concerning the persons named in the urgent appeal. When questioned by the Department of Public Prosecutions the persons who had been arrested and placed in preventive detention said nothing about having been attacked. Nevertheless, the Department ordered that they be examined by the forensic medical examiner to determine whether they had any injuries, and the forensic report confirmed the absence of any injuries.

Regarding the death of Mr. Ali Jasim Mohamed Maki, the Government provided the following information.

On 17 December 2007 the competent security department was informed by the International Hospital of Bahrain that an individual had died there and that his body had been transferred to the morgue of Salmaniya hospital. Upon receipt of the report, the Department of Public Prosecutions - which is an independent judicial body - was notified and took the following steps. The head of the Department of Public Prosecutions went straight to Salmaniya hospital, examined the body and found no signs of injury. The Department of Public Prosecutions took a decision to form a tripartite commission chaired by the Department's senior forensic pathologist, with two doctors from Sahnaniya hospital as members, in order to ascertain the cause of death. After confirming that the body bore no injuries, the commission conducted an autopsy and found that the cause of death was sudden circulatory arrest. None of the relatives of the deceased asked the Department of Public Prosecutions for a second opinion from an independent specialist. The autopsy was conducted in the presence of relatives of the deceased. The medical commission carried out the necessary medical tests in order to prepare the final medical report on the cause of death.

The Department of Public Prosecutions brought 15 accused persons - not human rights defenders - before the High Criminal Court on charges of unlawful assembly, setting a police car on fire, using force and violence against police officers, stealing firearms and parts thereof from cars, and concealing and possessing weapons without a licence. The Department also brought two other accused persons before the Criminal Court, one on charges of attempting to kill a police officer and the other with attempting to set fire to a police car. The foregoing decisions by the Department of Public Prosecutions were based on a large amount of evidence in the form of confessions by several of the accused and testimony of several police officers, in addition to the results of the examinations, technical reports and pictures taken of the accused persons holding a gathering, setting fire to a police car and stealing weapons from it.

The allegation that legal representatives were denied access to the accused is untrue, as all but one of the accused decided during questioning to forfeit the right to have a lawyer present. The lawyer of the one person who did decide to ask for a lawyer was allowed to attend the examination proceeding, pursuant to article 134 of the Code of Criminal Procedure. This article stipulates that, before questioning an accused person

or confronting him or her with other accused persons or witnesses (except where the person was caught in flagrante delicto, or where urgent action is required for fear that evidence might be lost), a member of the Department of Public Prosecutions must invite the lawyer of the accused - if he or she has one - to attend.

The article also requires an accused person to state the name of his or her lawyer, which will be recorded by the registry of the court or the prison warden. The accused did not do this. The Department of Public Prosecutions, on the other hand, ordered that all the necessary facilities be provided to allow any of the family members or lawyers of the accused persons to visit them in their places of detention if they so wished.

Bangladesh: Attack on Journalist Sumi Khan

Violation alleged: Death threats and fear of imminent extrajudicial execution

Subject(s) of appeal: 1 female (journalist)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Bangladesh concerning the current status of its investigation into the attack on Sumi Khan. However, the SR is concerned by the Government's unsubstantiated assumption that the attack was the result of general "law and order" difficulties despite the victim's unrefuted allegations that her attackers made specific threats linked to her work as a journalist. The SR would reiterate that the Government has an obligation to take the measures necessary to ensure her personal security.

Follow-up letter dated 17 October 2006 (to a letter of allegation sent on 5 May 2004)

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 31), relating to the death of journalist Sumi Khan who was stabbed and critically wounded in the Nandan Kanon area of Chittagong on 27 April 2004. In its response, your Excellency Government informed that four persons were arrested and investigated and that all attempts had been made for the personal security of Ms Khan.

As further indicated in my observations, I would be grateful if your Government could provide me with detailed information relating to the outcome of this case and to the measures taken to ensure Ms Khan's personal security.

I would appreciate a response within sixty days. I undertake to ensure that your Government's response is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

Response from the Government of Bangladesh dated 30 April 2007

1. Ex-staff reporter of the Magazine “Weekly 2000”, Ms. Sumi Khan was stabbed by some unknown miscreants (3/4) on 27 April 2004 at about 10:30 near Nandon Kanon of Kotowali Thana (Police Station), Chittagong, while she was traveling by a rickshaw from her office 14/Ka, A.C. Dutta Lane, Patherghata to Kazhirdewari. They snatched away her handbag with Taka 6,500/- (US\$ 95/- approx.). She got a knife-injury on her forehead.
2. Ms. Sumi Khan submitted a written complaint to Kotowali police station, Chittagong and a case (case no. 48, date 28 April 2004) in this connection. Immediately after the receipt of the complaints, the local police arrested five persons suspected to be involved. The suspects were taken in police remand for interrogation. During the interrogation, police could not find any link of the arrestees with the incident. In the process of interrogation, police also contacted Sumi Khan and asked whether she could identify them. But the victim could not identify any of them as her assailant. Since the Police also could not establish any link of the suspects with that case, they were eventually released according to the law.
3. Meanwhile, the Investigating Officer (IO) of the case, Sub-Inspector (SI) Jahangir was transferred from Kotowali Police Station and the case was handed over to SI Zakir Hossain Mahmud. The new IO of the case also tried to find out the offender but in the absence of any clue could not make any progress. Finally with the consent of the higher authority, the IO submitted final report to the concerned court on 22 July 2005, where it was mentioned that the actual criminals could not be identified. The court accepted the report on 17 September 2005. It was however mentioned in the court order that the case might be reopened if the actual criminals can be identified. The order was subsequently conveyed to Ms. Sumi Khan as per existing practice. Since then, the authorities have not been informed of any threat to her personal security.
4. Presently, Ms. Sumi Khan is working in “Weekly-71” as a staff reporter. She is also a special reporter of the “Daily Amader Somoy” and both of these news papers are baed in Chittagong where she is living. She resides in AC Dutta Lane (Near Chittagong Jail), Kotowali with her husband. Her husband Mr. Md. Alim is a lecturer of Chittagong Government Girls College. They are leading a peaceful and normal life.
5. The incident that took place against Ms. Sumi Khan is not uncommon in Bangladesh. This is a law and order issue, which the Government is striving to tackle through limited means. There are many constraints in a country of 150 million people, such as shortage of police personnel, unavailability of necessary technology and lack of resources, which deter achieving the best possible law and order situation. The Government is not in a position to guarantee the personal security of each and every national despite best intentions. Nevertheless, the Government is well aware of its responsibilities to people and commitment to ensure enjoyment of human rights and fundamental freedom for all. Its endeavour is relentless to improve the situation.
6. The current interim Government soon after assuming office has undertaken some major steps to improve governance and rule of law, which are essential pre-

requisites for effective enjoyment of human rights. Within a week of its tenure, it has taken a bold step to separate the Judiciary from the Executive branch, which eluded the country for decades. Also a decision has been taken by the Government to establish a National Human Rights Commission, which had been pending since 1990's. The Police Act is being revised to ensure professionalism in the force and strict adherence to human rights principles and standards. The Government has embarked on uprooting corruption from the society. Bangladesh has become a State Party to the UN Convention against Corruption during his short period. All these initiatives will have a positive impact on overall situation of human rights in the country.

Bangladesh: “Crossfire” Killings of Abul Hawladar and Md. Shamim

Violation alleged: Deaths due to attacks or killings by security forces

Subject(s) of appeal: 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the detailed information provided by the Government of Bangladesh. The SR would note, however, that the explanation given in this particular case fails to address or explain a pattern in which criminal suspects are routinely shot and killed in the crossfire while in the custody of the Rapid Action Battalion (RAB).

In addition to the case of Abul Hawladar and Md. Shamim, the SR has sent an allegation letter concerning 27 specific cases (A/HRC/4/20/Add.1, pages 37-49) and another conveying the allegation that the RAB had killed 367 people between June 2004 (when it was first created) and October 2006 (see below). Many of these other deaths reportedly resulted from the exact scenario which the Government provides for the deaths of Abul Hawladar and Md. Shamim: They were arrested and asked to guide the police to a location where firearms were hidden whereupon their accomplices opened fire on the police, ultimately leading to the suspects' death in the crossfire. Based on the information thus far received, the SR continues to find this pattern in which suspects are routinely reported to have died in “crossfire” indicative of staged extrajudicial executions.

The SR would appreciate receiving an explanation for why the practice of making suspects accompany police on follow-up raids has not been discontinued if it provides the explanation for these hundreds of deaths.

He would also appreciate receiving precise information on the “several examples of punishment or legal proceedings [brought] against [RAB members] for illegal activities” mentioned in the Government's response.

Allegation letter dated 30 October 2006

In this connection, I would like to bring to your Government's attention information I have received regarding the killings of two persons, reportedly in a 'crossfire' by the Rapid Action Battalion (RAB) in Khulna on 1 September 2006, after they were arrested from their respective houses.

According to the information received, on the morning of 1 September 2006, a Rapid Action Battalion (RAB) team arrested Mr. Md. Shamim (laundry worker) and Mr. Abul Hawladar (chicken-seller) from the Tutpara area in Khulna. Early in the morning on September 2, sounds of gunfire and hand bombs blasted throughout the streets awaking the inhabitants of Baro Khalpar, Khulna city. When local people thought that it was a robbery they began to shout at the culprits; however, the RAB officers urged them not to worry and explained that they had an 'encounter' with an extremist group. In its news release issued on September 2, the RAB-6 reported that they arrested Mr. Abul Hawladar and Mr. Md. Shamim from Tutpara on September 1, at around 9:00 am. During their interrogation, both men reportedly confessed that they were cashiers (toll-collector) of the underground extremist party "Janajuddho" (Mass war). They also revealed the names of their associates, who were allegedly plotting destructive activities on a regular basis at their meetings in the Baro Khalpar area. The RAB officials informed that when they took Abul and Shamim to the Baro Khalpar area, terrorists open fired against the officials, who then replied with gunshots. The RAB officials also claim that during the 'encounter' between the RAB and the gang, Abul and Shamim fled the scene. The police along with local people then found their bodies and brought Abul and Shamim, to the hospital where the on duty doctors declared them dead. According to the information I have received, the killings have not been investigated and they have been recorded as "killings in encounter". It has been alleged that the use of lethal force against Abul Hawladar and Md. Shamim from Tutpara was not justified and that these killings are not an isolated incident. In this respect, it has been brought to my attention that 283 persons were reportedly killed in similar circumstances by the RAB since it began its operations in June 2004, in the aftermath of the anti-crime operation "Clean Heart". I understand that many of these killings share certain common elements as they are often reported by the RAB as having taken place in an exchange of fire with the RAB, which is usually triggered by the presence of "terrorists". In other instances, reports indicate that the culprits tried to escape and were caught in crossfire. Concerns have also been expressed for the families of the deceased who have reportedly received death threats by members of the RAB who told them not to speak out regarding the circumstances of the deaths of their relatives.

While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency's Government to the fundamental principles applicable to such incidents under international law. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, "arbitrarily" means in a manner "disproportionate to the requirements of law enforcement in the circumstances of the case" (Views of the Committee in the case *Suárez de Guerrero v. Colombia*, Communication no. 45/1979, § 13.3). In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a

“thorough, prompt and impartial investigation” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st session of the Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions”.

I would also like to appeal to your Excellency’s Government to instruct its Rapid Action Battalion teams to comply with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These principles note, inter alia, that law enforcement officials should “as far as possible apply non-violent means before resorting to the use of force and firearms” and that “in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”. I would also like to draw your Excellency’s attention the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution 34/169 (1979) which more succinctly stresses the limited role for lethal force in all enforcement operations.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these alleged incidents, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. On what basis was it decided to kill, rather than capture, Abul Hawladar and Mr. Md. Shamim? What rules of international law does your Excellency’s Government consider to govern these incidents?
3. Please provide the details, and where available the results, of any police investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to the alleged use of lethal force in the above incidents. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the details of any disciplinary measures or criminal prosecution in relation to the members of the armed forces responsible for the above killings.
5. Please state whether any investigation into the alleged death threats against the families of Abul Hawladar and Mr. Md. Shamim have been initiated. If no inquiries have taken place, or if they have been inconclusive, please explain why. If investigations have occurred, were any measures taken to protect the families of the victims.

Response from the Government of Bangladesh dated 22 February 2007

As you mentioned in your letter, members of the Rapid Action Battalion (RAB) were involved in the incident. A few years back, this force was created to support the regular police. Terrorism, criminality, armed violence, killing, hijacking and extortion had become common occurrences, leading to general insecurity. The police was struggling to cope with the situation. There was demand for decisive action from general people, professional groups, and the business community. Our friends abroad, including major development partners, stressed the need for firm action to improve the law and order situation.

To respond to the new challenges in fighting law and order, the Rapid Action Battalion was created. Personnel from specially trained police as well as the Army were brought together to form this battalion. In its actions, it is guided by existing laws and rules, including the Criminal Procedure Code; it has no special or extraordinary authority. Since its inception, the RAB has been performing its duties with good reputation. Its success in reducing violence, terrorism and other criminal activities and in restoring a general sense of law and order has generated considerable support among the public.

The reports we have received indicate that the two deceased individuals, Md. Shamim Khan and Md. Abul Hossain, were known criminals. They possessed illegal arms which they used for extortion from people in Khulna. Two petitions letters received from people alleging extortion charges against them have been attached with the detailed report.

After being arrested, Md. Shamim and Md. Abul Hossain also confessed that they were members of an outlawed party and were involved in collecting extortion money and involved in other criminal activities, and disclosed names of their associates. Subsequently both of them died in the encounter the details of which have been enumerated in the RAB report. Two RAB members were also injured in the shootout. The members of Rapid Action Battalion recovered ammunitions and few parts of bombs from the spot after the incident. The incident was investigated by a magistrate of the local court. All necessary legal obligations were maintained during the RAB operation.

I must stress that should members of the RAB be found to have indulged in illegal activity, appropriate action is taken. There are several examples of punishment or legal proceedings against them for illegal activities. All other questions raised in your letter have been adequately answered by the Bangladesh authorities.

Let me conclude by reiterating that Bangladesh is committed to upholding the fundamental rights of its people and to spare no effort to create conditions so that rights of all citizens are protected. It has a strong judiciary where people can seek recourse without fear and intimidation. The country has a very vibrant civil society and many Human Rights organizations and activists. The presence of a highly vocal and free media keeps the government actions under strict scrutiny. Any deviation from the norm is brought to the attention of the public immediately.

Information Regarding Allegation against the Deaths of Two Persons: Md Shamim, Laundry Worker and Abul Hawladar, Chicken Vendor, Reportedly in a "Crossfire" by the Rapid Action Battalion (RAB) in Khulna on 01 September 2006.

Reference A: United Nations High Commissioner for Human Rights letter number AL G/SO 214(33-24) BGC 18/2006 dated 30 October 2006

On 01 September 2006, during a gunfight between Rapid Action Battalion (RAB) and outlawed underground extremist group Purba Bangla Communist Party (PBCP), two PBCP members were killed. They are: Md Shamim (23), son of Ismail Khan, address: West Tutpara, PS- Khuina, KMP and Md Abul Hossain (24), son of Shejon Hawladar, Address: Tutpara, PS- Khulna, KMP. The clarification in response to the questions (number 1 to 5) mentioned in Reference A is as follows:

a. Facts: Based on a tip-off, the members of RAB-6 Khulna confirmed through intelligence that Md Shamim Khan and Md Abul Hossain (not Md Abul Hawladar, as mentioned in reference A) were active members of outlawed underground extremist group PBCP (faction - ML Janajuddho). They were listed criminals known to be extortionists and illegal arms holders who had been demanding extortion money giving death threats over cell phones to different people in Khulna. People including high government and non-government officials, doctors, engineers and businessmen were being threatened to pay extortions for the last few months. Upon cross-checking the information with the intelligence and various other sources- a team of RAB-6, Khuina on 01 September 2006 at 0900 hours raided the Jorakal Bazar, Tutpara of Khulna Sadar Thana and arrested Md Shamim and Md Abul Hossain. During interrogation, Md Shamim and Md Abul Hossain confessed that they were members of the PBCP (ML Janajuddho) and were involved in collecting extortion money for PBCP including being involved in other criminal activities, and disclosed names of their associates. Identifying themselves as cashiers of the PBCP Janajuddho faction, they confessed that as per directive of their leaders Partho Shaha and Rony Biswas, they collected tolls from doctors, engineers, businessmen, and government and non-government officials in Khulna. During interrogation the outlaws disclosed some information on a regular hideout of their accomplices and how they collected extortion money. The outlaws also gave information about how their party leaders at an earlier scheduled meeting to be held at Tutpara Baro Khalpar area in the city were planning subversive activities. Based on Md Shamim and Md Abul Hossain confessional statements, a special team of RAB-6, Khulna along with Shamim and Abul launched an operation at 0250 hours on 02 September 2006 to recover illegal firearms as well as to nab their accomplices at Tutpara Bara Khalpar area. The terrorists who had been in the aforementioned meeting hurled homemade bombs and opened fire on the RAB members in attempt to snatch away Md Shamim and Md Abul Hossain from custody. The RAB members retaliated, applying the right of private defence and to save Government property by opening counter fire as provided under sections 96, 97, 100, 103 and 106 of The Penal Code 1861 (of Bangladesh). Both Md Shamim and Md Abul Hossain attempted to escape during the gunfight and received bullet injuries. They were then taken to a nearby hospital for proper treatment and medical investigation (Vide The Police Regulations of Bengal, Rule- 312) as soon it could be possible. Upon arrival at the hospital, the on duty doctor declared them dead. Two RAB members were also injured in the shootout. The members of Rapid Action Battalion recovered the following ammunitions and few parts of bombs from the spot after the incident:

- (1) 03 Rounds live cartridge.
- (2) Some parts of unexploded bombs.
- (3) Some portion of black folding tape of exploded bombs.
- (4) Some portion of burned black wire of exploded bombs.

The RAB also prepared a seizure list in presence of three witnesses named Abdul Kader Sardar, Md. Anwar Hossain Mridha and Md. Abdur Sattar Sheikh (in compliance with The Code of Criminal Procedure Section 103 and The Police Regulation of Sengal Section 280).

b. Legal Basis of Apprehension and Charges against Md Shamim and Md Abul Hossain. The legal basis of apprehension of and charges against Md Shamim and Md Abul Hawladar are as under:

- (1) Md Shamim and Md Abul Hossain confessed themselves to be the cashiers of Janajuddho faction of PBCP (ML Janajuddho), who were involved in collecting extortion money from doctors, engineers, businessmen, government and other non-government officials in Khulna as per directive of their leaders Partho Shaha and Rony Biswas.
- (2) They used to threaten with life on the phone to anyone refusing to pay heed to their demand for extortion money. It may be mentioned here that the terrorists collected extortion money from the people using flexi-load (pre-paid credit recharging service) provided by Grameenphone (a local cell phone operator company). A photocopy of a complain lodged with RAB-6 by Kazi Monirul Hassan, of Green blouse, Municipal Tank Road, Khulna regarding life threat and the General Diary no.876 date 17 Aug 2006 with Sonadanga Police Station (KMP) regarding the same are attached with this report.
- (3) The RAB members seized their mobile phones including SIM cards that were issued under the names of their accomplices and, evidence of their toll collection through flexi-load (A photocopy of Grameenphone subscriber form and declaration of killing of Ibrahim who is a member of Purba Sangla Communist Party (ML) Rashid Group are also attached with this report).
- (4) Upon crosschecking the information with the intelligence and various other sources-an operation team of RAB-6, Khulna on 01 September 2006 at 0900 hours raided the Jorakal Bazar, Tutpara of Khulna Sadar Thana and arrested Md Shamim and Md Abul Hossain.
- (5) Their confessional statement led to another operation by a special team of RAB-6, Khulna in which Shamim and Abul were taken to Tutpara Baro Khalpar area on 02 September 2006 at 0250 hours to recover the firearms and nab their accomplices.
- (6) During this mission, the PBCP terrorists hurled bombs and opened fire on the RAS members and attempted to snatch away Md Shamim and Md Abul Hossain. The RAB members retaliated, applying the right of personal defence and to save the Government property by opening counter fire as provided under sections 96, 97, 100, 103 and 106 of The Penal Code 1861 (of Bangladesh). Md Shamim and Md Abul

Hossain received bullet injuries while trying to escape during the shootout. They were then sent to a nearby hospital for proper treatment and medical investigation (Vide The Police Regulations of Bengal, Rule-312), where the on duty doctor declared them dead. Two RAB members were also injured in the shootout.

(7) Considering the above-mentioned situation it is clear that it was a sudden and isolated incident, not an intentional or pre-decided one. The RAB actions were in compliance with the rules as described in para 2 of this report.

b-1. Legality of Operation. RAB members are trained professionals from discipline forces of the state. During all operations, RAB members are using absolutely minimum force to deal with suspected terrorists/armed criminals and while doing so report to use of force only as a last stand for self-defence and preservation of public property. They follow the laid down Code of Conduct and appropriate Rules of Engagement The legal procedures followed by RAB after any incident of gunfight with the criminals are as follows:

(1). After Arrest: Gunfight at the time of Recovery of Arms and Apprehension of Criminal Associates. When a listed criminal is arrested by the RAB, the arrested person sometimes discloses information about the location of his gang's hideout and the cache of arms-ammunitions. When the RAB makes follow up raids on such hidden caches and gangster hideouts, the gangsters often retaliate forcefully by using firearms. They even attempt to snatch away the arrested criminal. In order to protect own lives and government's properties (for exercising right of private defence) the RAB may open counter-fire against the criminals as provided under sections -96, 97, 900, 103 and 106 of The Penal Code 9869.

(2) Often such encounters may lead to serious injury and death. After gunfight, the RAB forces take the following steps to comply with the law (relevant rules/regulations are mentioned in brackets):

(a) Preparation of seizure list of recovered arms-ammunition, blank cartridge and illegal harmful elements (if any) in presence of witnesses in the scene of occurrences. [The code of Criminal Procedure- Sec103, The Police Regulations of Bengal -280]

(b) The injured person is sent to the nearest hospital/health complex for proper treatment and medical investigation. [The Police Regulations of Bengal -312]

(c) If the doctor declares a person dead, the RAB takes necessary steps to prepare an inquest report by a magistrate. (The Code of Criminal Procedure- Sec 176] The dead body (if any) is sent to morgue for autopsy. [The Police Regulations of Bengal – 3061

(d) Cases are registered with the local police station on the death of victim (if any), recovered arms and other elements.

(e) If the gunfight has occurred in the Dhaka Metropolitan Police (DMP) area, an Executive Inquiry is carried out by the Police Commissioner/ Deputy Police Commissioner of DMP. (Dhaka Metropolitan Police Drdinance 2006, ruse-101; or:

If the incident occurs outside the DMP area and anywhere else in Bangladesh, an empowered magistrate carries out an Executive Inquiry to ascertain whether the firing was justified and whether appropriate regulations were obeyed or not [The Police Régulations of Bengal, Sec-157]

(f) When an individual, while in RAB custody, dies in a gunfight between the RAB and miscreants, an Inquiry is done by an empowered magistrate to ascertain the circumstances and cause(s) of death. [The Code of Criminal Procedure, Sec-176]

(g) The filed cases of concern incidents are investigated by the local police. The local police also frames charge sheet or file final report and sends it to the court for onward actions. (The Code of Criminal Procedure, Sec 170 and 173)

(h) The court evaluates the charge sheet or the final report and declares a verdict.

c. Details about Investigations and Judicial Actions. Following legal actions were taken by RAB soon after the death of Md Shamim and Md Abul Hossain:

(1) When the on duty doctor declared them dead, the RAB took appropriate legal steps to prepare an inquest reports by a Khulna Metropolitan Magistrate named Md Golam Rahman Miah (Vide The Code of The Criminal Procedure Section 176).

(2) The dead bodies were sent to morgue for autopsy (Vide Police Regulation of Bengal Rules 306) by Dr Md Shahidul Islam, Assistant Professor, Khulna Medical College and he has noted his opinion in the autopsy reports.

(3) Md. Abdul Hamid, Deputy Assistant Director of RAB-6 lodged the First Information Report (FIR) with the officer-in-charge of Khulna Sadar Police Station, Khulna Metropolitan Police (KMP) three cases were filed after the incident as described below:

(a) Khulna Police Station, KMP Case No-04 dt 0219/06 Under Section 19-A, The Arms Act.

(b) Khulna Police Station, KMP Case No-05 dt 0219/06 Under Section 3 The Explosive Substance Act, 1908.

(c) Khulna Police Station, KMP Case No-06 dt 0219/06 Under Section 14811491332135311141304 The Penal Code.

(4) The police investigated all the above cases and submitted the following investigation reports:

(a) Khulna Police Station, KMP Case No-04 dt 0219/06 Under Section 19-A, The Arms act. Police submitted investigation report as Final Report True (FRT) no. 158 Date 04 Dec 2006 under section 19-A, The Arms Act.

(b) Khulna Police Station, KMP Case No-05 dt 0219/06 Under Section 3 The Explosive Substance Act, 1908. Police submitted investigation report as Final Report

True (FRT) no. 162 Date 22 Dec 2006 under section 3, The Explosive Substance Act, 1908.

(c) Khulna Police Station, KMP Case No-06 dt 0219/06 Under Section 14811491 3321363/i 14M4 The Penal Code. Police submitted investigation report as Final Report True (FRT) no. 161 Date 22 Dec 2006 under Section 14811491 332135311141304, of The Penal Code.

The same were forwarded to the honourable court for lawful verdict (Vide The Code of The Criminal Procedure Section 170 and 173).

(5) The honourable court accepted the Final Report True (FRT) of sub sub para (4)(c) and ordered to deposit the recovered firearms in the armoury and rest of evidences to be destroyed as per rules.

(6) After that incident (death of Md Shamim Khan and Md Abul Hossain) an Exécutive Inquiry (Vide The Police Régulation of Bengal Section 157) process was initiated by RAB-6

(7) Khulna Metropolitan Magistrate Mr Md Atiqul Hoque inquired in to the causes of death of Md Shamim Khan and Md Abul Hossain (Vide the Code of Criminal Procedure, Section-176). In his report, the magistrate noted that:

(a) The members of Rapid Action Battalion had to open fire to save their own lives and the public property entrusted with them, namely arms and ammunitions.

(b) During gunfight between RAB and the extremist gang, Md Shamim Khan and Md Abu] Hossain died from gunshots received from either of the parties.

d. Details of any Criminal Prosecution or other Disciplinary Action against Rapid Action Battalion. As none was accused of any offense (as alleged in Reference 'A') no question was raised to take legal action against any member of RAB. However existing rules/regulations provide for strict legal actions to be taken against RAB members involved in any improper/unlawful activities beyond the jurisdiction or capacity of the organisation, or for breaking the code of conduct. All such cases are thoroughly investigated by appropriate authorities and cases lodged are to be before the criminal courts against such personnel vide RAB Rules (Rapid Action Battalion Court and Departmental Proceedings), 2005.

Since no one prayed for any compensation on behalf of the family of the deceased person, the question of compensation did not arise.

e. Investigation into the Alleged Death Threats Against the Familles of Md. Abul Hossain and Md Shamim Khan. The RAB or any other law enforcing agencies have so far not received any kind of information about alleged death threats against the families of Abul Hossain and Mr. Md Shamim. After death of the two extremists, the RAB were concerned and attentive about maintaining safety and security of their families. No source could confirm if death threats were given to their families. So there was no reason to initiate any investigation/Inquiry about the allegation as described in Reference 'A' Question no - 5.

2. Information Concerning Relevant Oversight Mechanism, Codes of Conduct or Similar Protocols Governing Rapid Action Battalion. As follows:

a. The Rapid Action Battalion was created through the "The Armed Police Battalions (Amendment) Act, 2003," and published in the Bangladesh Gazette of July 12, 2003.

b. The Rapid Action Battalion has to work under prescribed and statutorily laid down procedure. The Code of Criminal Procedure, 1898, is a prudently crafted and time-tested piece of procedural legislation. This procedure is in vogue in the sub-continent and other countries in Asia, amongst others. The law regarding searches is contained in sections 102, 103, 165, and 166 of the Code, and they must be scrupulously followed.

c. The Rapid Action Battalion, as distinguished from other organizations, has been entrusted with exclusive duties like "gathering intelligence in respect of crime and criminal activities" and "Investigation of any offence on the direction of the government" as stated in sections 6(A), 6(aa), and 6(bb) of the Act. Section 6B states: "The government may, at any time, direct the Rapid Action Battalion to investigate any offence."

d. Section 6 c Clause-1 [of the Act mentioned in sub-para 2(a) above] states: "An officer of a Rapid Action Battalion shall, while investigating an offence, follow the procedure prescribed in the Code of Criminal Procedure 1898 (Act V of 1898) or in any other law, as the case may be, for the investigation of such offence."

e. Section 6 c Clause (2) states in pertinent part: "The concerned officer shall, on completion of the investigation of any offence under this ordinance, file his report to the officer-in-charge of the concerned police station, and the officer-in-charge shall, within forty-eight hours of the receipt of such report, forward the same as it is to the competent court or tribunal, as the case may be.

f. Section 6D states: "An officer of any Rapid Action Battalion may, while investigating an offence or performing any duties under this ordinance with respect to the cases originated from that offence, exercise all such powers and perform all such functions and duties as may be exercised or performed by a police officer under the Code of Criminal Procedure, 1898 (Act V of 1898)."

3. The rise of crime and terrorism on a global scale over the past few years saw its reflection in the national scenario of Bangladesh. In the whole country crime escalated at an alarming rate, along with the menacing threat of terrorism. It was at this juncture that the Rapid Action Battalion, better popularly known as RAB, came into being. The inception of the Code of Criminal Procedure marks the prescience and commitment of the Government of the People's Republic of Bangladesh to curb crime in all socio-economic and political arenas of the country in order to ensure peace, the rule of law, better living standards and socio-economic development of the people and the state.

4. The government took the initiative to create a separate law enforcing organization, beside the existing institutions, as the degradation of law and order was

tarnishing the image of the country at home and abroad, not to mention posing as a menace to public life. Instability of the state was becoming a matter of national and international concern. Now, after almost three years of its official launching on 26th March 2004, the Rapid Action Battalion is highly lauded both at home and abroad for its tangible performance in tackling terrorism and crime.

Bangladesh: “Crossfire” Killings by the Rapid Action Battalion

Violation alleged: Deaths due to attacks or killings by security forces

Subject(s) of appeal: At least 367 people

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 12 January 2007

On 22 August 2006, I sent you a communication about the trend that appears to have emerged in the last two years of criminal suspects being shot and killed in crossfire while in the custody of Bangladesh police or Special Forces. I then submitted to your Government a detailed list of 27 individuals who had been killed in a police shootout. At the time I expressed my concern about the fact that the pattern of incidents suggested that they were in fact staged extrajudicial executions. On 30 October 2006, I brought to your Government’s attention two additional cases of persons reportedly killed in a “cross fire” by the Rapid Action Battalion. These communications unfortunately remain unanswered by your Excellency’s Government.

I have now received additional information according to which killings by the Rapid Action Battalion (RAB) continue unabated. It is claimed that many deaths take place in RAB detention. The victims are either tortured or extra judicially executed. According to the information received:

The RAB is reportedly responsible for the deaths of 367 people between June 2004 (when it was first created) and October 2006, which represents an average of 13 deaths per month. Reports indicate that the RAB justifies its killings by saying that the victims are “wanted criminals” or “top terrorists” who died when they resisted arrest or were caught in “crossfire” between the force and criminal gangs.

The information I have received corroborates the concerns expressed in my letters of 22 August and 30 October 2006. Allegedly, the Government gave the RAB a mandate to kill suspected criminals instead of arresting them. One top official reportedly said that the Government also drafted a list of most-wanted criminals for RAB to kill. Moreover, the frequency of reported RAB abuses is indicative of what seems to be an atmosphere of impunity in which members

of the Battalion are allowed to operate. To date, not a single RAB member is known to have been criminally convicted for having tortured a detainee or killed a suspect. To my knowledge, the most serious known punishment for involvement in a “crossfire” death is the administrative sanction of dishonourable discharge.

While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency's Government to the fundamental principles applicable to such incidents under international law. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, “arbitrarily” means in a manner “disproportionate to the requirements of law enforcement in the circumstances of the case” (Views of the Committee in the case *Suárez de Guerrero v. Colombia*, Communication no. 45/1979, § 13.3). In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a “thorough, prompt and impartial investigation” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st session of the Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions”.

I would also like to appeal to your Excellency's Government to instruct its Rapid Action Battalion teams to comply with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These principles note, inter alia, that law enforcement officials should “as far as possible apply non-violent means before resorting to the use of force and firearms” and that “in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”. I would also like to draw your Excellency's attention the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution 34/169 (1979) which more succinctly stresses the limited role for lethal force in all enforcement operations.

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

1. Are the facts alleged accurate?
2. Please provide information concerning the exact mandate of the RAB; please provide information concerning the use of lethal force during RAB enforcement operations and concerning its general code of conduct; please provide information of

any step taken to prevent such crossfire deaths or other deaths from occurring in the future.

3. Please provide details concerning relevant RAB oversight mechanisms; please provide information concerning the details of any criminal prosecutions or other disciplinary action taken with respect to any officer involved in a “crossfire” or in a death in detention. Please include the facts of the incident for which the officers were punished, the details of the punishment, and whether the officers are still serving on the force.

Bangladesh: Death in Custody of Choles Ritchil

Violation alleged: Death in custody

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

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur notes the information provided by the Government of Bangladesh. The Special Rapporteur would request that the Government inform him of the results of each individual penal or disciplinary proceedings of military and civilian personnel involved in the death of Choles Ritchil.

Allegation letter dated 27 April 2007 sent with the Special Rapporteur on the question of torture and Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

We would like to bring the attention of your Excellency’s Government to information that we have received regarding the alleged arrest, torture and subsequent killing of Mr. Choles Ritchil, a Garo leader from Beribaid village, in Modhupur Upozila, in the Tangail district, and the alleged beating, arrest and torture of other indigenous persons in Modhupur Upozila by agents of the Joint Forces.

According to the information we have received:

On 10 February 2007, officials from the Joint Forces, commanded by Warrant Officer Jamal, 2nd Lt. Minjhaj and Sergeant Shahadat, raided Beribaid village in search of Mr. Choles Ritchil.

They arrested Mr. Protab Jamble, Mr Biswajit Simsang (Mr. Ritchils’ son, a 10th grade student), Mr. Prem Kumar Sangma (also a 10th grade student), Mr. Nosil Ritchil (a relative of Mr. Choles Ritchil) and Nokul Chandra Burman (a worker at Mr. Choles Ritchils’ residence). The detained persons were beaten during their detention. As a result, they required medical treatment at the Health Complex in Modhupur from 11 to 13 February 2007.

On 18 March 2007, Mr. Choles Ritchil, Mr. Piren Simsang, Mr Tuhin Hadima and Mr. Protab Jamble, were arrested while they were travelling in a microbus,

by a group of six members of the Joint Forces dressed in civil clothing at Kalibari, in Muktagacha Upozila.

Following the arrest, the men who had arrested Mr. Choles Ritchil and the other three persons travelling with him made telephone calls that led to the arrival of 40 additional agents of the Joint Forces in two lorries. The security forces took the arrested persons to the nearby Khakraid army camp at around 2:00 p.m. In the army camp, Mr. Choles Ritchil and Mr. Protab Jamble were kept in one room, and Mr. Piren Simsang and Mr. Tuhin Hadim in another one.

Mr. Choles Ritchil was tied to the grill of a window and beaten by nine persons. A man identified as Major Toufiq Elahi entered the room ordering junior officers to “size up Choles”, following which the members of the Joint Forces used pliers to press Mr. Ritchil’s testicles and put needles on his fingers. Hot water was poured into Mr. Ritchil’s nostrils. He was hanged upside down, vomited blood and fainted several times. At one moment, a physician in uniform came into the room, accompanied by Major Toufiq Elahi. Subsequently, Mr. Ritchil was taken out of the army camp to an unknown location.

Mr. Protab Jamble, Mr. Piren Simsang and Mr. Tuhin Hadima were also subject to torture during their detention. Mr. Piren Simsang and Mr. Tuhin Hadima were released at approximately 5:00 p.m. on 18 March 2007 from the Kharaid Army camp, whereas Mr. Protab Jamble was released at approximately 10:00 p.m. on the same day, after he was given medical treatment.

On 19 March, Mr. Ritchil’s dead body was handed over by the Superintendent of Police of Tangail District and the Assistant Superintendent of Police of Gopalpur Circle of Tangail District to his family and other indigenous leaders, at approximately 2:00 p.m. at the Jalchatra Corpus Christi Church compound.

Mr. Ritchil’s burial took place at Beribaid village at about 1:00 p.m. on 20 March. During the traditional bath that was given to Mr. Ritchil’s body before the burial, witnesses saw that his eyes had been plucked; his testicles removed; his anus mutilated; his two hand palms had been smashed and had holes; all fingers of his two hands were broken; the nails of three fingers had been removed; there were several blood stains on the back part of the body; there were holes in the middle part of both of his thighs; the back part of the body had several black marks; there were several deep marks of wounds on both lower legs; there were black marks on his feet; and a nail of his right foot was missing.

On 20 March 2007, Mr. Choles Ritchil’s family filed a complaint at the Modhupur Police Station. However, the station has so far failed to register the case.

We are concerned that the alleged detention, torture and extrajudicial killing of Mr. Choles Ritchil could be linked to his activities in defence of the rights of the Garo indigenous people Modhupur, in particular to his leading role in the Garo people’s

protests against the creation of an Eco-Park in Modhupur Forest and the construction of the boundary wall around the Eco-Park. This construction, which had been postponed in January 2004, was restarted after the declaration of the State of Emergency on 11 January 2007.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Government's attention to Article 7 of the International Covenant on Civil and Political Rights, which provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

We would also like to refer Your Excellency's Government to the fundamental principles applicable under international law to deaths in custody. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, "arbitrarily" means in a manner "disproportionate to the requirements of law enforcement in the circumstances of the case" (Views of the Committee in the case *Suárez de Guerrero v. Colombia*, Communication no. 45/1979, § 13.3).

In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions". These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We therefore urge your Government to initiate an inquiry into the circumstances surrounding the death of Mr. Choles Ritchil and the ill-treatment of Mr. Protab Jamble, Mr. Piren Simsang and Mr. Tuhin Hadima, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate the victims and Mr. Ritchil's family.

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

1. Are the facts alleged in the above summary of the case accurate?

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation has been paid to Mr. Protab Jamble, Mr. Piren Simsang and Mr. Tuhin Hadima and the family of Mr. Choles Ritchil.

Response from the Government of Bangladesh dated 11 October 2007

The Government informed that a one-member judicial investigation commission, composed of a retired district judge was set up under the Commission of Enquiry Act 1956. It carried out an extensive investigation on the allegations. In this connection, four persons belonging to the armed forces were punished, including removal from service and debarment from promotion. A number of other individuals, which include public officials, doctors and forest officials, are also being punished accordingly.

Bangladesh: Deaths in Custody Three Men

Violation alleged: Deaths in custody

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 3 September 2007 sent with the Special Rapporteur on the question of torture

We are writing to you concerning reports of three deaths of individuals following their initial arrest by the security forces. Investigations into the deaths have reportedly been inconclusive and the perpetrators have not been found.

According to information we have received:

Mr Zakaria, was arrested at home in the village of Bibirkhill, Pohorchandra on 28 March, 2007. It is understood that he was arrested due to a complaint he had made against Sub-Inspector Abul Kalam. He was taken to the Chokoria Police Station and to court the same day (along with two others who were arrested at the same time). The court ordered the release of the three persons although they were brought back to the police station at about 7pm the same day. It is

understood that Mr Zakaria was beaten on the way to and from the police station the same day. At 8.30 pm policemen carried Mr Zakaria out of the police station and put him in a rickshaw, telling his wife to take him to see a doctor. Mr Zakaria was declared dead at Chokoria Upazila Health Complex on his arrival there. It is understood that the police subsequently refused to accept a complaint filed by the wife of Mr Zakaria, although a petition filed at the Magistrates Court by the family of the deceased led to a Magistrate's order for the Chokoria police station to re-investigate the case.

According to information we have received, Mr Jahangir Alam a local leader of the Jubo League in Teknaf was arrested by the Navy in Cox's Bazaar on 3rd May, 2007. He was reportedly punched, kicked and beaten by four or five persons who then dragged him into a Navy jeep. He was reportedly transported to hospital for the first time on 3rd May by the police before being transferred to the Teknaf police station. On 4th May, 2007 Mr Alam was reportedly brought back to hospital after his condition had worsened, whereupon he died. Numerous injuries, bruises and marks were found on his body. An unnatural death case was filed at in the Teknaf Police station.

According to information received, Mr Torik Miah was arrested on 18 June, 2007 by army personnel from Moulovibazar, at Kulaura Thana. The army reportedly stated that a team of 15 army personnel led by Captain Sakib arrested Mr Miah at the western Bazar area of Moulovibazar town. Army personnel searched Torik Miah's house and forced his wife to sign a blank sheet of paper. Mr Mubir Miah, Torisk's brother was visited by a Police Constable Sultan from Kalaura police station, who forced Mubir to sign a blank piece of paper and then informed him that his brother's body was at the hospital. The police constable informed Mubir that his brother had died from a heart attack. It is our understanding that a request by local human rights groups for the inquest report submitted to the Officer in Charge of Kulaura Police Station received a reply to the effect that army officials had instructed that it could not be released. An unnatural death case was reportedly filed at the police station. A cleric, Mr Taher who bathed the victim's body reported that the victim's body was badly bruised and appeared to have been beaten.

Without in any way implying any conclusion as to the facts of the case, we recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) to which Bangladesh is a Party enshrines the right not to be arbitrarily deprived of one's life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. This means that a State is presumed to be responsible for the death of the person under international law, unless clear evidence to the contrary emerges, explaining how the death occurred. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (1990)): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

We should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the deaths of the above persons. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, "stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed".

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

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

Brazil: Killing of Land Reform Activist Santos do Carmo

Violation alleged: Death due to attacks or killings by security forces of the State

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 2 July 2007 sent with the Special Representative of the Secretary-General on the situation of human rights defenders, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the right to food

We would like to bring to your Government's attention information we have received in relation to Mr. Antonio Santos do Carmo, rural worker and member of the Movimento de los Trabajadores Sin Tierra (MST), a movement which works for land rights and agrarian reform in Brazil.

According to information received:

On 2 May 2007, Mr. Santos do Carmo, along with a group of MST members, were ambushed by unknown individuals, in front of the Hacienda São Felipe, near the motorway connecting Belem de Para with Brasilia. The assailants, some of them allegedly belonging to the military police, entered the MST camp and began to attack those inside. Mr. Santos do Carmo was violently assaulted and died from bullet wounds to the chest and throat. Other MST members were also injured in the attack.

After the incident, MST members blocked the road between Belem and Brasilia as a form of protest and demanded that representatives from the National Institute for Agrarian Colonization and Reform, and the federal Government take action to resolve the situation in the area. The following day one a man suspected of having taken part in the attack on the MST members was detained.

Concern is expressed that the killing of Mr. Santos do Carmo along with the attack on members of MST may be directly related to their work in defence of human rights, and in particular the rights of rural workers in Brazil. Further concern is expressed for the safety of members of the Movimento de los Trabajadores Sin Tierra.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer Your Excellency's Government to the fundamental principles applicable to such incidents under international law. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, in the context of law enforcement -which would not appear to be the case of the above incident of the Hacienda São Felipe-, "arbitrarily" means in a manner "disproportionate to the requirements of law enforcement in the circumstances of the case" (Views of the Committee in the case *Suárez de Guerrero v. Colombia*, Communication no. 45/1979, § 13.3).

The duty to protect against the arbitrary deprivation of life is all the more pressing when the right to life is endangered because a person is exercising his or her right to freedom of opinion and expression in accordance with fundamental principles as set

forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

In this connection, we would also like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels".

Furthermore, we would like to bring your Excellency's attention to the following provisions:

- Article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In the case at hand, it would appear that Mr. Santos do Carmo and the other MST members were attacked because of their activity aimed at securing their right "to an adequate standard of living for [themselves] and [their] famil[ies], including adequate food, clothing and housing, and to the continuous improvement of living conditions", which is enshrined in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, to which Brazil is a Party. Pursuant to Article 11(2) of the Covenant, immediate and urgent steps may be needed to ensure "the fundamental right to freedom from hunger and malnutrition". The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to everyone. States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11.

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and that accountability of any person guilty of the alleged violations is ensured. In this respect, we would like to point out that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st session of the Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct

exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, . . . , to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to . . . prevent the recurrence of such executions”.

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

1. Are the facts alleged in the above summary of the case accurate? To what extent and in what capacity were members of the security forces involved in the attack against Mr. Santos do Carmo and the other MST members?
2. Please provide the details, and where available the results, of any judicial investigation and other inquiries carried out in relation to the killing of Mr. Santos do Carmo and the attack on MST members. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please indicate what measures have been taken by the authorities to ensure the protection for members of the Movimento de los Trabajadores Sin Tierra (MST) in order to guarantee their safety.

Brazil: Killing of Rodson da Silva Rodrigues, Aurina Rodrigues Santana and Paulo Rodrigo Santana

Violation alleged: Deaths due to attacks or killings by security forces of the State; Death threats and fear of imminent extrajudicial executions by State officials

Subject(s) of appeal: 2 males, 1 female

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 18 September 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding two people who were tortured by military police on 21 May 2007, and that one of those victims, along with two others, were summarily executed on 14 August 2007 in the community of Calabetão, municipality of Salvador, Bahia. We would like to bring to your urgent attention that the information we have received

about these cases suggests that there is an imminent threat to the right to life of the surviving torture victim, and that of her two sisters and other witnesses to the alleged torture and subsequent summary execution.

The allegations that we have received indicate that:

The two instances of torture occurred on 21 May 2007, in the home of Rodson da Silva Rodrigues (28 years old), Aurina Rodrigues Santana (44 years old), and Aurina's son Paulo Rodrigo Santana (19 years old). It is alleged that military police from the 48th Compañía Independiente de la Policía Militar del estado de Bahia (48th CIPM – Sussurana) invaded the home and tortured Paulo Rodrigo Santana and his sister (unnamed, 13 years old). Over a four hour period, police demanded that weapons, drugs, and money be handed to them, and inflicted punches and feigned-suffocation with a plastic bag on both youths. Paulo was also abused with an iron bar and hot oil was poured on his head.

Aurina Rodrigues Santana brought the allegations of torture to the attention of the Human Rights Commission of the Legislative Assembly of Bahia, which were then reported in the media. Paulo apparently asserted that the police had told him that attempts to bring police to account would lead to the deaths of Paulo and his sister. The complaint of torture was presented to the órgano de fiscalización de la policía militar (Corregedoria) on 27 May 2007, and on 6 August 2007 Paulo and his sister provided testimony to the Corregedoria, insisting that they could identify the police officials involved. The officers specifically named in the torture complaint were Lieutenant Vítor Luís Maciel Santos, and the soldiers Ademir Bispo de Jesus, Antônio Marcos de Jesus and José Silva Oliveira, of the 48th CIPM.

It is alleged that one week later, on 14 August 2007, Aurina, Paulo and Rodson were summarily executed in their home. The thirteen year old girl was not in the home at that time. According to allegations received, residents of the community believe that police executed the family, and have testified to the 10th Delegacia de Polícia (Comisaría) that the police repeatedly threatened the family after the torture allegations were made public.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Article 6 requires States to provide effective protection to those whose lives are in danger. As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions, including those who receive death threats, be guaranteed effective protection through judicial or other means. Specifically, alleged victims of torture, witnesses and their families must be protected from violence, threats of violence, or any form of intimidation that may arise pursuant to the investigation of torture allegations (UN Principles on the Effective Investigation

and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 3(b)).

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would also like to draw your Government's attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In relation to the allegations of summary execution by police on 14 August 2007, we would also like to bring to your government's attention that Article 6 of the ICCPR prohibits, as expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials, the intentional lethal use of firearms by police, unless it is necessary in order to protect life (Principle 9). We would also like to bring to your Government's attention that your Government has a duty to thoroughly, promptly and impartially investigate suspected cases of extra-judicial execution, and to prosecute and punish all violations of the right to life. To fulfill this legal obligation, governments must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7).

We urge your government to take all necessary steps, as required under international law and outlined above, to protect the right to life of the thirteen year old girl, her surviving family members, and neighborhood witnesses. In view of the urgency of the matter, we would appreciate a response on the steps currently taken by your government to safeguard the right to life of these persons. In particular, please indicate what, if any, form of witness protection has been offered or is being provided to those whose lives are at grave risk, and what urgent efforts are being made to find those responsible for the alleged threats, torture and summary executions.

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

1. With respect to the allegations of torture and summary execution, are the facts alleged in the above summary accurate? Please refer to the status or results of any police or medical investigation, or judicial or other inquiries carried out in relation to the alleged incidents. Please specifically refer to the status or findings of the Corregedoria or the Delegacia de Polícia (Comisária).

2. Please provide the details of any disciplinary measures imposed on or criminal prosecutions against police responsible for the alleged torture and summary execution.

3. What measures are taken by your government to ensure the safety and right to life of witnesses to crimes, and of those victims who testify publicly against police? Specifically, please indicate what security and witness protection were provided to the two alleged victims of torture and their family members subsequent to the making of their torture complaints? As mentioned above, please also indicate what measures will be taken to ensure the safety of the unnamed 13 year old alleged torture victim, her surviving family, and of the other witnesses to alleged police harassment and abuse in the neighborhood.

4. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

Brazil: Killings in the Complexo do Alemão area of Rio de Janeiro in June 2007

Violation alleged: Deaths due to excessive use of force by law enforcement officials; Impunity

Subject(s) of appeal: 19 males

Character of reply: Largely satisfactory response.

Observations of the Special Rapporteur

The Special Rapporteur received detailed information on this case from Government officials as well as witnesses, and he will present his findings in his report.

Allegation letter dated 3 October 2007

I would like to bring to your Government's attention information I have received concerning 19 cases of summary execution of civilians by civil and military police and National Force soldiers in the Complexo do Alemão, in the northern zone of Rio de Janeiro, on 27 June 2007.

According to the information received:

The following 19 people were shot by police and the National Force:

- 1) Rafael Bernardino da Silva, 20 years old.
- 2) Pablo Alves da Silva, 15 years old.
- 3) David de Souza Lima, 14 years old.
- 4) Paulo Eduardo dos Santos, 18 years old.
- 5) Geraldo Batista Ribeiro, 41 years old.
- 6) Jairo César da Silva Caetano, 28 years old.
- 7) Bruno Vianna, 22 years old.
- 8) Cléber Mendes, 36 years old.
- 9) Bruno Rodrigues Alves, 21 years old.
- 10) Emerson Goulart, 26 years old.

- 11) Uanderson Gandra, 27 years old.
- 12) Marcelo Luiz Madeira, 27 years old.
- 13) Claudomiro Santos Silva, 29 years old.
- 14) Alexsandro José de Almeida, 34 years old.
- 15) Bruno Paulo Gonçalves da Rocha, 20 years old.
- 16) Luiz Eduardo Severo Madeira, 28 years old.
- 17) José da Silva Farias Júnior, 18 years old.
- 18) Rafael Marques Serqueira, 26 years old.
- 19) Maxwell Vieira da Silva, 17 years old.

The allegations that I have received indicate that the killings occurred during a large police operation intended to combat crime in the Complexo do Alemão area of Rio de Janeiro. It is claimed that during the operation, police held guns to the heads of children and teenagers, asking if they knew where gang members were, and that police yelled, “I want blood”. The claim that the 19 victims were summarily executed by police is allegedly supported by evidence that the majority of the victims were shot in vital organs, such as the head, thorax and neck, that 68% of the bodies were shot at least once from behind, and that 26% were shot at least once in the head.

The allegations that I have received also indicate that the investigations into the deaths have been inadequate. On the basis of a report by a legal medical consultant to the Commission of Human Rights of the Brazilian Bar Association, it is alleged that four factors indicate inadequate investigations: tests were not conducted on the victims’ clothing to determine whether shots were fired at close range; examinations were not conducted on the victims’ hands to test for gunpowder residue; x-ray machines were broken and thus not used to determine the precise location of bullets in the victims’ bodies; and the crime scenes were not investigated.

Further, according to allegations received, the Permanent Commission for the Combat of Torture and Institutional Violence of the Special Secretary of Human Rights of the President of the Republic created a group of independent experts on 4 July 2007 to follow the investigation of the deaths. The independent experts asked the head of the Civil Police of the State of Rio de Janeiro for detailed information related to the investigation, including autopsy reports, police reports, lists of weapons used by the police, and facts related to the location and recovery of the bodies. However, it is alleged that no information has yet been made public by the Secretary of Public Security of Rio de Janeiro or by the Special Secretary of Human Rights on the results of the work of the independent experts.

While I do not wish to prejudge the accuracy of these reports, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (“ICCPR”) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of

Firearms by Law Enforcement Officials (“Basic Principles”), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

I would also like to bring to your Government’s attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. To fulfill this legal obligation, governments must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7). There must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides guidelines for investigations, which includes conducting an adequate autopsy, and the collection and analysis of all physical and documentary evidence. Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17).

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

1. Are the facts alleged in the above summary accurate? Please refer to the status or results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incidents, particularly any report by the Permanent Commission for the Combat of Torture and Institutional Violence of the Special Secretary of Human Rights of the President of the Republic’s group of experts. Please also indicate whether, and if so, when, your Government intends to make the results of investigations available to the families of the deceased victims.
2. Please provide the details of any disciplinary measures imposed on, or criminal prosecutions against, police or members of the armed forces responsible for the alleged incidents.
3. What measures are taken by your Government to ensure that police and the armed forces, as far as possible, apply non-violent means before resorting to the use of force, and that they respect and preserve life when the lawful use of force is unavoidable?
4. What measures are taken to ensure that investigations of alleged executions by police are undertaken thoroughly, impartially and promptly?
5. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

Brazil: Death of 25 Prisoners at Ponte Nova Detention Centre, Minas Gerais

Violation alleged: Death in custody

Subject(s) of appeal: 25 males

Character of reply: Largely satisfactory response.

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Brazil with respect to the incident at Ponte Nova detention centre.

The SR welcomes the measures undertaken to reduce overcrowding in detention centres in the State of Minas Gerais. He would appreciate receiving information on the outcome of the administrative procedures initiated against those responsible for the Ponte Nova detention centre.

Allegation letter dated 18 October 2007

I would like to bring to the attention of your Excellency's Government reports I have received regarding the deaths of 25 prisoners on 23 August 2007 at the Ponte Nova detention centre in the state of Minas Gerais.

According to the information received:

A group of prisoners from one section of the jail broke out and entered another wing, forced a rival group of prisoners into a cell and set the cell's mattresses on fire, killing 25 inmates. It is alleged that although the jail has a capacity of 87 inmates, it houses 175, and that the severe overcrowding contributed to the deaths.

While I do not wish to prejudge the accuracy of this allegation, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). Your Government has a duty to investigate, prosecute, and punish all violations of the right to life.

I would also like to bring to your Government's attention that your Government has a two-fold obligation to respect and ensure the right to life (ICCPR, Article 2(1)). A state may fail to meet its legal obligations to respect and ensure by either a positive act or by an omission that results in inadequate measures taken to protect life. Whether a State has failed to meet these obligations depends on a situation-specific application of the due diligence standard (See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the General Assembly, 5 September 2006, UN Doc A/61/311). The controlled character of the custodial environment permits States to take unusually effective and comprehensive measures to prevent

abuses against inmates by both government officials and other inmates. Additionally, by severely limiting inmates' freedom of movement and capacity for self-defence, the State assumes a heightened duty of protection. States are required to provide mechanisms of strict legal control and full accountability, and to take measures to provide safe and humane conditions of detention. Given the obligation to respect and ensure, and the heightened duty and capacity to fulfill the obligation in the custodial setting, there is a rebuttable presumption of state responsibility in cases of custodial death. A State must affirmatively provide evidence that it lacks responsibility, and, absent this evidence, the State has an obligation to make reparations to the victim's family.

In this case, the alleged facts suggest that your Government has not met the due diligence standard required in this specific context. It is acknowledged that it may be difficult in some situations to control violent inmates, and that a State's limited resources may inhibit its ability to prevent such harm. However, the escape of a group of inmates from one wing of a prison, and their ability to enter another wing and kill 25 rival inmates by trapping them in a cell containing burning mattresses, suggests that there were significant omissions in security and protection in the Ponte Nova jail. The failure of security officials to prevent the initial escape, combined with their failure to adequately intervene to protect the 25 trapped inmates, suggests extremely poor internal prison security, amounting to a failure to adequately ensure the right to life of inmates. Additionally, the fact that the prison was at more than double its intended capacity also suggests that your Government has failed to direct adequate resources to prisons, and has thereby unduly undermined the safety of inmates.

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

1. Are the facts alleged in the above summary accurate? Please refer to the status or results of any police, or medical investigation, or judicial or other inquiries carried out in relation to the alleged incidents. Please also specifically refer to any investigations into prison conditions in the Ponte Nova jail and/or prison guard actions (including omissions) which indicate: (a) how it was possible for the group of inmates to escape from their wing, enter another wing and trap other inmates; and (b) how these deaths could have occurred in a prison facility.
2. Please provide the details of any disciplinary measures imposed on, or criminal prosecutions against, the prisoners who are directly responsible for the acts alleged here.
3. What measures are taken in prisons to ensure adequate security for inmates? What, if any, measures will be taken to increase security in the Ponte Nova prison so that the right to life of inmates is ensured?
4. What actions is your Government taking to reduce overcrowding in the prison system?

5. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

Response from the Government of Brazil dated 20 February 2008

The Government provided information from the Civil Police of the State of Minas Gerais in relation to the motivation and circumstances of the cited case. This information was based on more than 200 testimonies of civil and military policemen, prisoners (that already have been transferred to other detention center), of the families of the prisoners and was confirmed by the reconstitution of the crime in the presence of the state prosecutor with jurisdiction at Ponte Nova.

According to the Civil Police, the prisoners Walisson Macedo Pinto, Wanderson Macedo Pinto, Richardson Macedo Pinto and Wemerson Macedo pinto, members of the "Biju Gang", managed to gain entrance to the Ponte Nova Detention Cente, with the help of other prisoners and a prison worker, and armed with a 38 caliber pistol, two pieces of a saw blade and about 20 rounds of ammunition. Their motive was "evening the score" with a rival group, known as the "Clevinho Gang". The motives of the episode spring from old rivalries between the heads of both gangs, who disputed the command of the drug traffic in the quarter of Sao Pedro, in Ponte Nova, before being arrested.

On the night of the event, Pablo Marques Ramos, broke out the lock of the cell where he was staying with the other members of his gang, with an iron bar, allowing these members to have access to the cell number 8, which housed the rival group. The prisoners of the cell 8 decided to throw burning mattresses outside of their cell as a way to defend themselves. The initial fire was controlled by the "Biju Gang", which managed to break out the locks in the cell number 8, encompassing its occupants with gunshots, using the gun in the possession of Walisson Macedo Pinto. Walisson Macedo Pinto, trying to avoid direct contact with the rival gang, decided, with the rest of his group, to throw the burning mattresses - now wet with an inflammable substance made with iodone and alcohol, usually used in the treatment of skin diseases - inside the cell again and threatened to shoot at who tried to get out.

The results of the investigations done by the Civil Police revealed that the guns used in the event entered the detention center by a bribe paid by one of the prisoners, Mauricio Alvim Campos, who was in a semi-open regime, to the guard responsible for the magazines that entered the institution for prisoners in semi-open regime.

The perpetrators of the crime made the event look like a rebellion which postponed the action of the security agents, since the preparation for the confrontation with a rebellion requires more time. The perpetrators also tied prisoners to the gate that gives access to the burning cell, to serve as a human shield against police action. The guards of the detention center, thinking that it was a rebellion, threw moral effect grenades and fire crackers in the halls of the center, while one of the members of the Biju Gang was on the phone negotiating the surrender of the group with the Regional Delegate, Dr. Luiz Carlos Chartouni. Once the crime scene investigation started, 25 burned bodies in cell 8 were found, and guns, drags and cellular phones were found hidden in the wall of cell number 10. The result of autopsies on the bodies by the Medical Legal Institute show that the death of the 25 prisoners was due to the fire provoked by the

fight between the two rival gangs. Traces of marihuana and cocaine were found in the blood of some of the prisoners.

Indictments, based on different penal types, were issued to 23 of the prisoners involved, including the guard Mauricio Alvin Campos. Preventive detention of all those implicated has already been established, and only one of them, up to this moment, has escaped. The penal process related to the incident is occurring in the jurisdiction of Ponte Nova. An administrative process against the Director of the Public Detention Center, Wanderley José Miranda, and also against the Regional Delegate of Ponte Nova, Luiz Carlos Chatourni is underway.

The Sub-Secretary of Prison Administration of the State of Minas Gerais forwarded an official document which describes the measures taken to improve conditions in the public detention centers in the State. In Minas Gerais, the administration of prisons is still the concomitant responsibility of the civil Police and the Sub-Secretary of Prison Administration. In order to change this situation, the State Government has implemented actions to transfer this responsibility exclusively to the Sub-Secretary of Prison Administration. From 2003 to 2006, the capacity of the prison system of the state was enlarged to 8,316 prisoners, under the responsibility of the Sub-Secretary of Prison Administration. Of this total, 1.513 prisoners correspond to transfers from units once under the responsibility of the Civil Police. The other 6.803 prisoner spaces come from the construction of new units and the enlargement of old ones. In 2006, the number of prisoner spaces in the prison system administrated by the Sub-Secretary of Prison Administration became greater than that of the Civil police, which can be seen as a positive sign, not just in terms of management of public security and of the prison system but also in terms of the improvement of prison conditions which is superior in the establishments managed by the Sub-Secretary of Prison Administration. This year, the construction of 3.552 more vacancies in the State Prison System is planned, as well as the transfer of other 1.022 prisoner slots from the civil Police to the Sub-Secretary of Prison Administration. This initiative gives priority to the removal of prisoners from institutions with more severe problems of overpopulation.

It should be recognized that until the conclusion of the work of enlargement of the State Prison System, even the units under the management of the Sub-Secretary will function at full occupancy. In the specific case of Ponte Nova, the prompt transfer of the surviving prisoners from the Civil Police Prison System to the State System was provided. Such measures were not taken before the incident of August 23 because there were other detention centers with worse overpopulation problems than the one in Ponte Nova, and, as such, the transfer of prisoners from those other centers was given priority. To definitely resolve the problem of detention center overpopulation in the area of Ponte Nova, the inauguration of a prison system with a higher number of vacancies, which will substitute the local prison system of the Civil Police, is planned.

Brazil: Killing of Land Rights Activist Valmir Mota de Oliveira

Violation alleged: Deaths due to attacks or killings by security forces

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 26 October 2007 sent with the Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding one incident of an extrajudicial execution, and multiple incidents of attempted extrajudicial executions by an armed militia group on 21 October 2007, at the Via Campesina encampment at the GMO field of Syngenta Seeds, Santa Tereza do Oeste, Paraná, Brazil.

According to allegations received:

At 1.30 pm on 21 October 2007, an armed militia of approximately 40 persons arrived at the entrance of the Via Campesina encampment and began shooting at the rural workers. The militia broke down the gate to the encampment, and invaded the site. They shot and killed Valmir Mota de Oliveira (42 years old), a leader of the Movimento dos Trabalhadores Rurais Sem Terra (MST). Five other farmers were also shot and seriously wounded:

1. Gentil Couto Viera.
2. Jonas Gomes de Queiroz.
3. Domingos Barretos.
4. Isabel Nascimento de Souza.
5. Hudson Cardin.

It is alleged that Isabel Nascimento de Souza was also beaten. Two other MST leaders, Celso Barbosa and Célia Aparecida Lourenço, were chased by gunmen, but escaped. Allegations received suggest that the militia's actions indicate that the intent was to specifically kill the MST leadership.

According to the allegations received, the background to the attack is that 150 MST members peacefully occupied the Syngenta Seeds field at 6.00 am on 21 October 2007. At that time, there were 4 private security guards in the area. A gun belonging to one of the guards was fired, injuring a worker. The MST then sought to disarm the guards, who subsequently left the area. It is alleged that the Syngenta Seeds company employed the armed militia which subsequently returned at 1.30 pm, and that the militia acted through a front company called NF Security, in conjunction with the Rural Society of the Western Region (SRO) and the Movement of Rural Producers (MPR).

Allegations received also indicate that during a public hearing on 18 October 2007, with the Commission for Human Rights and Minority Rights (CDHM) of the Federal Chamber of Congressional Representatives, in Curitiba Paraná, it was communicated that MST leaders, including Valmir Mota de Oliveira,

had been threatened for the previous 6 months by militia who were employed by the Syngenta-SRO-MPR group. According to allegations received, Brazilian authorities had opened an inquiry into allegations against Syngenta and NF Security, but had taken no actions to protect MST leaders.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

Regarding the alleged extrajudicial execution of Valmir Mota de Oliveira, we would like to bring to your attention the Government's duty to thoroughly, promptly and impartially investigate suspected cases of extrajudicial execution, and to prosecute and punish all violations of the right to life. As reiterated by the 61st Commission on Human Rights in Resolution 2005/34, all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", and "to identify and bring to justice those responsible".

With respect to the prior death threats against Valmir Mota de Oliveira, and the continuing death threats to other members of the MST leadership, we would like to bring to your attention that Article 6(1) of the ICCPR requires States to provide effective protection to those whose lives are in danger. As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions, including those who receive death threats, be guaranteed effective protection through judicial or other means. We urge your government to immediately take all necessary steps, as required under international law, to protect the right to life of the members and leaders of the MST, especially Celso Barbosa and Célia Aparecida Lourenço, who are in particular danger.

In this connection, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring your Excellency's attention to the following provisions, and in particular to article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against

any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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

1. What steps are being taken to investigate the execution and apparent attempted execution of MST leaders and members on 21 October 2007, and to detain and prosecute the perpetrators?
2. What steps were taken in response to allegations, communicated to your Government on 18 October 2007, that MST leaders had received death threats from militias employed by the Syngenta Seeds company?
3. What protection measures are being offered to MST leaders (particularly Celso Barbosa and Célia Aparecida Lourenço) now, and what steps are being taken, to ensure the right to life of the MST leaders?
4. What is the status and scope of the Commission for Human Rights and Minority Rights' inquiry into the Syngenta and NF security companies?
5. What laws, rules, or guidelines govern the activities and functions of private security firms? Are any steps being taken to disband and disarm militias in Paraná?

Brazil: Violence against Members of the Guajajara Indigenous Community of Lagoa Cumprida

Violation alleged: Impunity

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

Character of reply: No response

Observations of the Special Rapporteur +

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

Urgent appeal dated 31 October 2007 sent with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to allegations we have received concerning Tomé Guajajara, Madalena Paulino, Antonio Paulino as well as the threat of imminent violence against 50 families of the Guajajara indigenous community of Lagoa Cumprida, in the Araribóia reservation, Maranhão state.

According to the information received:

The reservation of Araribóia, one of the oldest indigenous reservations in Brazil, covers an area of 413 thousand hectares across six municipalities of Maranhão state. Since the beginning of the 1980s, the region has reportedly been subject to repeated incursions from illegal loggers, resulting in violent conflict with indigenous peoples and widespread environmental damage, including deforestation, forest fires and water drainage. According to the reports, ninety per cent of the traditional lands of the Guajajara people is said to be affected by logging, hunting and land invasions, threatening indigenous livelihoods. The Guajajara have been campaigning for the protection of the reservation's borders and the expulsion of illegal settlers.

On 15 October 2007, at about 6.00 am, a group of 15 armed men -five of them masked- allegedly invaded the Lagoa Cumprida indigenous community. According to the reports, six indigenous people were grouped on a football field and threatened, with the gunmen firing in the air. After trying to defend himself against the attack, sixty year old Tomé Guajajara was reportedly shot six times and killed. Two other community members, Madalena Paulino, Antonio Paulino were allegedly wounded. The gunmen reportedly stated that they would return and some residents are reported to have fled to hide in the forest or nearby towns.

The attack has been interpreted as revenge against the mobilization of indigenous organizations against illegal logging in the reservation. In particular, it is alleged that the attack may be related to the seizure of a logging truck by the Guajajara in September 2007, when passing illegally through the indigenous reservation, and after a long but fruitless campaign to get the authorities to act against repeated incursions from the loggers. When the loggers offered money for the return of the vehicle, the indigenous community refused to negotiate, informing the National Indian Foundation of the situation.

Even though Federal police agents visited the reservation in the aftermath of the attack on 15 October, the reports that we have received indicate that the community is in a state of fear and feels abandoned by the authorities, and some of the community members have reportedly fled to neighbouring towns or hid in the forest. It is reported that the community has still not been visited by representatives from the National Indigenous Foundation (Fundação Nacional do Índio FUNAI), and that no measures have so far been taken to protect the community.

Serious concern is expressed regarding the safety of the leaders and other members of the Guajajara indigenous community of Lagoa Cumprida. It is

further feared that leaders and members of the community might be targeted because of their activities in defense of their human rights.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

With respect to the present threats to the right to life of the Guajajara community, Article 6(1) of the ICCPR requires States to provide effective protection to those whose lives are in danger. As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions, including those who receive death threats, be guaranteed effective protection through judicial or other means. We urge your government to immediately take all necessary steps, as required under international law, to protect the right to life of the members of the Guajajara community.

With respect to the initial attacks on the Guajajara community by armed men, the allegations received suggest that the failure of FUNAI or the federal police to act upon the repeated notifications by the Guajajara of the increasingly volatile situation on their reservation may be a breach of your Government's obligation to ensure the right to life. Your Government has an obligation under Art 2(1) of the ICCPR to "ensure to all individuals within its territory" the right to life. As explained by the Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), this positive obligation to ensure the right to life:

"will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons ... There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."

These due diligence obligations to take all appropriate measures to deter and prevent extrajudicial executions may be breached where, for example, state authorities do not react promptly to reliable reports, the relevant legal remedies are ineffective or non-existent, authorities do not act to clarify a situation in the face of reliable evidence, or it takes no action to establish individual responsibility (See *Velásquez Rodríguez v. Honduras*, Annual Report of the Inter-American Court of Human Rights, OAS/Ser. L/V./III.19, doc. 13 (1988), 28 ILM (1989) 291; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, paras 71-73).

With respect to the alleged extrajudicial execution of Tomé Guajajara, we would also like to bring to your attention the Government's duty to thoroughly, promptly and impartially investigate suspected cases of extrajudicial execution, and to prosecute and punish all violations of the right to life. As reiterated by the 61st Commission on

Human Rights in Resolution 2005/34, all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, “to identify and bring to justice those responsible”, and to “adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions”.

We would also like to draw the attention of your Excellency’s Government on the UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007. According to the Declaration, “[i]ndigenous peoples have the right to have access to and prompt decision through just and fair procedures..., as well as to effective remedies for all infringements of their individual and collective rights” (article 40). Moreover, according to article 26 of the Declaration:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

In addition, we would like to refer to the International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Brazil on 25 July 2007. Article 12 of the Convention provides that “[t]he peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights”. In addition, according to the Convention, Governments “shall take steps as necessary...to guarantee effective protection of their rights of ownership and possession” (article 14.1). The Convention finally stipulates that “[a]dequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences” (article 18).

In this connection, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring your Excellency's attention to the following provisions, and in particular to article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. With respect to the alleged murder of Tomé Guajajara, what action has been taken to promptly and thoroughly investigate? Have the alleged perpetrators and those who retained them been detained and charged?
4. Please provide information on the measures taken to ensure the safety and right to life of the members of the Guajajara indigenous community. In particular, what police presence currently exists in the Araribóia reservation?
5. With respect to the alleged initial attack, what complaints were received by FUNAI or other government authorities regarding conflict between the Guajajara and illegal loggers in the area? What action did these authorities take in response to the reports?

Brazil: Death Threats against Human Rights Defender Maria de Lourdes Didier Leite

Violation alleged: Death threats

Subject(s) of appeal: 1 female (human rights defender)

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response concerning these allegations.

Urgent appeal dated 7 March 2008 sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding Ms Maria de Lourdes Didier Leite, a human rights defender in the State of Pernambuco.

According to information received:

Ms Didier Leite has been the subject of harassment due to her public criticism of the police investigation of her brother's killing. José Arnaldo Didier Leite, a farmer, assassinated on August 15th, 2003, allegedly at the hands of members of the police force and the city administration.

Since that time, Ms Didier Leite has reportedly faced death threats as a result of her denunciation of inefficiency and delays in the investigation. Reports indicate that she has also been warned that a member of the Military Police, identified in the information received, would make an attempt on her life if he lost his job as a consequence of investigations regarding José Arnaldo Didier's killing.

Concern is expressed that the intimidation and threats made against Ms Didier Leite may be directly related to her activities in defence of human rights, particularly her peaceful exercise of the right to freedom of expression. In view of the threats made against Ms Didier Leite, serious concern is also expressed for her physical and psychological integrity.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Article 6 requires States to provide effective protection to those whose lives are in danger. As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions, including those who receive death threats, be guaranteed effective protection through judicial or other means. A thorough, prompt and impartial investigation of all suspected cases of any such threats must be carried out and its results shall be made public.

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

We would also like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

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

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the intimidation of and threats made against Ms M^a de Lourdes Didier Leite. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information on the measures taken to ensure the safety of Ms Didier Leite.

Chile: Asesinato de Matías Catrileo Quezada, activista por los derechos de la tierra.

Violación alegada: Muerte a consecuencia de uso excesivo de la fuerza por las fuerzas de seguridad

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Chile por la información que ha proporcionado sobre la muerte de Matías Catrileo Quezada.

El Relator Especial pide al Gobierno de Chile que le mantenga informado sobre los resultados de sus investigaciones y sobre las sanciones impuestas a los responsables, así como sobre las compensaciones otorgadas a la familia de la víctima.

Llamamiento urgente del 8 de febrero de 2008 mandado con el Representante Especial del Secretario-General para los defensores de los derechos humanos

Quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con la muerte del Sr. Matías Catrileo Quezada, estudiante mapuche de 22 años de edad.

Según las informaciones recibidas:

El 3 de enero de 2008, a aproximadamente las 6 de la mañana, el Sr. Matías Valentín Catrileo Quezada, murió a consecuencia de un disparo de arma de fuego en la espalda, mientras se encontraba participando en un acto de protesta en una finca privada, en las proximidades de la comunidad mapuche Mariano Lleiful, comuna de Vilcún, IX Región.

Según las alegaciones, el Sr. Catrileo se encontraría participando, junto con un grupo de aproximadamente treinta comuneros mapuches, en un acto de ocupación de la finca Santa Margarita, actualmente en propiedad de un particular, y que la comunidad Mariano Lleiful reclama como parte de sus tierras tradicionales. Dicha ocupación habría generado la intervención de agentes del Grupo de Operaciones Policiales Especiales (GOPE), perteneciente a Carabineros de Chile, reapostados de manera permanente en la finca, quienes habrían comenzado a disparar para dispersar a los ocupantes con sus armas reglamentarias. El Sr. Catrileo habría fallecido supuestamente a consecuencia de uno de dichos disparos.

El cuerpo sin vida del Sr. Catrileo habría sido posteriormente trasladado por los manifestantes en una camilla improvisada hasta las cercanías de la Escuela La Roca, a unos cinco kilómetros del lugar de los hechos. Diez horas más tarde, y mediante la mediación del Obispo de la Araucanía, Mon. Sixto Parziner, el cadáver habría sido levantado por personal del Servicio Médico Legal y trasladado a Temuco para la realización de los estudios prescriptivos.

El 4 de enero, el Fiscal Militar habría procesado y ordenado la prisión preventiva del supuesto responsable de la muerte del joven, el cabo segundo de Carabineros, Sr. Walter Ramírez Espinoza.

Se expresa preocupación por el hecho de que la muerte del Sr. Catrileo, pueda ser el resultado de un uso excesivo de la fuerza policial contra manifestantes en reivindicación de derechos indígenas.

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

Asimismo, nos gustaría llamar la atención de su Gobierno sobre el Código de conducta para funcionarios encargados de hacer cumplir la ley, resolución 34/169 de 17 de diciembre de 1979 de la Asamblea General. En particular, el artículo 3 establece que los funcionarios encargados de hacer cumplir la ley podrán usar la fuerza sólo cuando sea estrictamente necesario y en la medida en que lo requiera el desempeño de sus tareas. En este mismo sentido, nos gustaría referirnos también a los Principios básicos sobre el empleo de la fuerza y de armas de fuego por los funcionarios encargados de hacer cumplir la ley, adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente,

La Habana, 27 de agosto a 7 de septiembre de 1990. Dichos principios establecen que los funcionarios encargados de hacer cumplir la ley, en el desempeño de sus funciones, utilizarán en la medida de lo posible medios no violentos y delimitan el empleo de la fuerza a determinados casos excepcionales, incluidos los de defensa propia o de otras personas en caso de peligro inminente de muerte o lesiones graves.

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

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

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

Igualmente, quisiéramos llamar la atención del Gobierno de Su Excelencia sobre la gravedad de los hechos alegados, así como por el contexto de conflictividad social en el que se registran. En el curso de su visita oficial a Chile en 2003, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas recibió información sobre “la alta presencia de fuerza pública, permanente, en las comunidades, en algunas de las cuales se llevan a cabo diligencias de averiguación, no exentas de violencia física y verbal, con el consiguiente temor de la población” (E/CN.4/2004/80/Add.4, párr. 31). En su informe, el Relator Especial

se específicamente asimismo al caso del menor mapuche Alex Lemún, que falleció el 13 de noviembre de 2002 como consecuencia de los disparos de un carabainero durante el curso de una confrontación, expresando su preocupación por el hecho de que el carabainero supuestamente responsable de su muerte fuera absuelto de todos los cargos (Ibid., párr. 29).

En este contexto, exhortamos respetuosamente a las autoridades de su Gobierno a que investiguen de forma completa y exhaustiva los hechos que dieron lugar a la muerte del Sr. Matías Catrileo Quesada y que se impongan las sanciones adecuadas al responsable o responsables de dicha muerte.

Es nuestra responsabilidad de acuerdo con los mandatos que nos han entregado la Comisión de Derechos Humanos, y esta reforzado por las resoluciones pertinentes de la Asamblea General y prorrogados por el Consejo de Derechos Humanos, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones?
2. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
3. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra el presunto culpable?

Respuesta del Gobierno de Chile del 12 de marzo de 2008

Circunstancias de la muerte de Matías Catrileo y competencia de la justicia militar para conocer de los hechos

En cuanto a los hechos acaecidos en enero de 2008 en la localidad de Vilcún, IX Región de La Araucanía, efectuadas las indagaciones pertinentes, se han recopilado los siguientes antecedentes.

El 3 de enero de 2008, alrededor de las 07:00 hrs. AM, Matías Catrileo Quesada, estudiante de agronomía de la Universidad de La Frontera, junto a más de una veintena de encapuchados comenzaron a prender fuego a unos 500 fardos emplazados en el fundo Santa Margarita, de propiedad del agricultor Jorge Luchsinger.

Instantes después de iniciadas las acciones, que tenían por finalidad reivindicar las demandas de tierras por parte de miembros del pueblo mapuche y con la presencia de funcionarios de Carabineros en el lugar, quienes vigilan constantemente el predio por la existencia de ataques anteriores y en virtud de una orden emanada de la Fiscalía de Temuco, Matías Catrileo recibe un disparo que le causa la muerte.

En efecto, en la fecha y hora señalada, en cumplimiento de una medida de protección, a favor del Señor Luchsinger, decretada en el proceso RUC 0500221997-5, seguido ante la Fiscalía de Temuco, por el delito de incendio y daños, la que había sido prorrogada en diciembre de 2007 por un periodo de 90 días, dos funcionarios de Carabineros de dotación de la Subcomisaría "Fuerzas Especiales", dependiente de la Prefectura de Cautín, se encontraban cumpliendo servicios de vigilancia preventiva en el fundo Santa Margarita, percatándose de la presencia de varias personas, que prendian fuego a fardos de pasto en proceso de cosecha desde el día anterior.

Ante la presencia policial, estas personas comenzaron a lanzar piedras mediante el uso de boleadoras y a efectuar disparos con arma de fuego contra los Carabineros, ataque que fue repelido por éstos.

Aproximadamente a las 08.00 hrs. AM., a través de un llamado telefónico efectuado a la Tenencia de Carabineros "Vilcún" por personal del Servicio de Salud local, se tomó conocimiento de que producto del enfrentamiento producido, habría resultado muerto el estudiante chileno Matías Catrileo Quezada.

Previa mediación del Obispo de Villarrica, Monseñor Sixto Pazzinger, a eso de las 17:30 hrs. del 3 de enero, se hizo entrega del cuerpo, en presencia del Fiscal Militar de Temuco, quien dispuso el retiro del personal de Carabineros que se encontraba presente en el lugar, trabajando exclusivamente con funcionarios de la Policía de Investigaciones de Chile, quienes, previos peritajes y por disposición de la referida autoridad judicial, retiraron el cuerpo y lo remitieron al Servicio Médico Legal de Temuco, para la autopsia de rigor.

Respecto de las circunstancias de la muerte de Matías Catrileo y la determinación de las responsabilidades penales a que hubiere lugar con motivo de los hechos descritos, serán establecidas por los tribunales de justicia que tienen a su cargo la investigación, a través de un debido proceso legal, ya que Carabineros dio cuenta de estos hechos tanto a la justicia ordinaria como a la militar.

Mediante Parte N° 05 de 4 de enero de 2008 de la Tenencia de Carabineros "Vilcún" se formuló la correspondiente denuncia ante la Fiscalía de Temuco, mientras que a través de Parte N° 01 de 3 de enero de 2008, se denunciaron los hechos a la Fiscalía Militar de Temuco, instruyéndose en esta última la causa rol 2-2008, por el delito de violencias innecesarias con resultado de muerte, habiendo sido sometido a proceso el Cabo 2° de Carabineros Walter Ramírez Hinojosa, de dotación de la Subcomisaría "Fuerzas Especiales" de la Prefectura de Cautín, a quien luego de haber permanecido en prisión preventiva se le otorgó el beneficio de la libertad provisional bajo fianza, por resolución de 31 de enero de 2008, de la Ilustrísima Corte Marcial.

Sin perjuicio de lo anterior, al interior de la Institución policial, el mando de Carabineros dispuso la instrucción de las indagaciones administrativas correspondientes, las que se encuentran en tramitación.

En conclusión, la actuación del personal de Carabineros, como la del resto de los participantes en los hechos informados, están sometidas al conocimiento y decisión de los Tribunales de Justicia, a quienes la Constitución Política de la República y las leyes dictadas conforme a ella, entregan la competencia para pronunciarse

válidamente sobre las eventuales responsabilidades penales que surjan de ellas, concurriendo a favor de los imputados las garantías procesales que reconoce et ordenamiento jurídico vigente, que asegura un justo y racional procedimiento.

Radicación de la competencia para conocer de la muerte de Matías Catrileo ante los Tribunales Militares

Conforme lo dispone el artículo 5.1 del Código de Justicia Militar (en adelante "CJM"), corresponde a la jurisdicción militar el conocimiento "*de las causas por delitos militares, entendiéndose por tales las contempladas en este Código...*", esto es, aquellos cometidos por militares en el ejercicio de sus funciones. Por su parte, de acuerdo a lo establecido en el artículo 6° del CJM, para todos estos efectos, "*se considerarán militares los que se encuentran comprendidos en las leyes de planta o dotación del Ejército, Armada, Fuerza Aérea y Carabineros...*".

Partiendo del supuesto de que Matías Catrileo murió como consecuencia de la fuerza innecesaria ejercida por un funcionario de Carabineros quien, en el contexto de la disuasión de actos de alteración del orden público cometidos en el fundo Santa Margarita, le disparó con su arma de cargo, tal conducta se enmarca dentro de lo prescrito por el artículo 330.1 del CJM, que tipifica y sanciona al militar que comete ejerciendo violencias innecesarias causa la muerte de una persona.

Por tanto, tratándose del tipo penal de "violencias innecesarias con resultado de muerte", que establece el mencionado artículo 330.1, al ser cometido por un funcionario policial en el cumplimiento de funciones propias del servicio, su conocimiento, juzgamiento y ejecución de lo resuelto, corresponde exclusivamente a los Tribunales Militares, de conformidad con las disposiciones citadas.

Lo anterior, guarda armonía con lo prescrito en los artículos 76 incisos 1° y 3°²⁵ y 82 inciso 1° de la Constitución Política de la República²⁶ y 1° y 5° inciso 3° del Código Orgánico de Tribunales²⁷, ya que los Tribunales Militares, en tiempo de paz, forman parte del Poder Judicial como "Tribunales Especiales", rigiéndose en su organización y atribuciones por las disposiciones del Código de Justicia Militar.

²⁵ Los incisos 1° y 3° del artículo 76 de la Constitución establece que "la facultad de conocer de las causas civiles y criminales, de resolverlas y de hacer ejecutar lo juzgado, pertenece exclusivamente a los tribunales establecidos por la ley. Ni el Presidente de la República ni el Congreso pueden, en caso alguno, ejercer funciones judiciales, avocarse causas pendientes, revisar los fundamentos o contenido de sus resoluciones o hacer revivir procesos fenecidos.

Para hacer ejecutar sus resoluciones, y precticar o hacer practicar los actos de instrucción que determine la ley, los tribunales ordinarios de justicia y los especiales que integran el Poder Judicial (entre los que se encuentran los Tribunales Militares en Tiempo de Paz), podrán impartir órdenes directas a la fuerza pública..."

²⁶ Mediante la dictación de la Ley 19.050 de 26 de agosto de 2005, se introdujo un nuevo texto del artículo 82 inciso 1°, que señala: "*Le Corte Suprema tiene la superintendencia directive, correccional y económica de todos los tribunales de la Nación. Se exceptúan de esta norma el Tribunal Constitucional, el Tribunal Calificador de Elecciones y los tribunales electorales regionales*".

²⁷ De conformidad con estas disposiciones del Código Orgánico de Tribunales, "*forman parte del Poder Judicial, como tribunales especialeslas Tribunales Militares en tiempo de paz...*" (Artículo 5° inciso 3°), perteneciendo "*la facultad de conocer de las causas civiles y criminales, de juzgarlas y hacer ejecutar lo juzgado, exclusivamente a los tribunales que establece la ley*", sean ordinarios o especiales.

En consecuencia, desde la reforma constitucional de 2005, los Tribunales Militares están sujetos a la superintendencia de la Corte Suprema.

China: Death sentence of Chen Tao

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the detailed response provided by the Government of China in relation to the case of Chen Tao.

Urgent appeal dated 19 January 2007 sent with Special Rapporteur on the independence of judges and lawyers

We would like to draw the attention of your Government to information we have received regarding the secret trial and execution of Mr. **Chen Tao**, a Sichuan farmer found guilty of killing a policeman during a demonstration. According to the reports we have received:

Mr. Chen Tao and three other protesters were arrested in 2004 after mass protests against a hydropower plant project in Sichuan province. The protesters had clashed with police, and a riot-control policeman was killed. The four men were tried behind closed doors in June 2006, Mr. Chen on the charge of “deliberately killing” the policeman. Their lawyers were not informed of the trial (in fact, they learned of the trial and the sentences inflicted on 4 December 2006, when the lawyer of a co-defendant received the sentence sheet), nor were the families notified. Mr. Chen was sentenced to death, the other three defendants to prison terms.

On 20 November 2006, Mr. Chen Tao’s father, Mr. Chen Yongzhong, received a court notice asking him to claim the ashes of his son and to pay 50 yuan for the bullet. Mr. Chen Yongzhong declined, arguing that he could not be sure whether the ashes would actually be his son’s.

While we do not wish to prejudge the accuracy of the allegations reported above, we respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants “a fair and public hearing before an independent and impartial tribunal” (Article 10 of the Universal Declaration on Human Rights) allows no derogation. A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, we would also like to refer Your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads:

“All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”

As for the right to a “public hearing”, while courts may exclude the public from all or part of a trial where publicity would imperil national security or other legitimate interests (e.g. the privacy rights of a minor), the judgment rendered in a criminal case must be made public, allowing only the narrowest of exceptions which clearly find no application in the case at issue.

In this respect, it should be noted that secrecy surrounding trial, sentence and post-conviction proceedings also makes the effective exercise of the right to appeal the sentence and to seek its commutation impossible. Considering the irrevocable nature of capital punishment, these rights are all the more fundamental. Only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right.

In the report on transparency in the use of the death penalty submitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Human Rights Council (E/CN.4/2006/53/Add.3, para. 30), he recalled the case of Mr. Dong Wei, a farmer from Shaanxi Province, to illustrate the risks that post-conviction opacity poses to respect for human rights. In that case, the Shaanxi Province High People’s Court rejected the appeal against the death sentence in a closed session and issued an order for Dong to be executed seven days later without informing his lawyer. The lawyer only found out two days before the execution was scheduled because he happened to visit the high court to ask about the progress of the appeal. The lawyer then traveled to Beijing at his own expense to appeal the case at the Supreme People’s Court, where he convinced a judge to review the case. The judge agreed with the lawyer that Dong’s case needed further review, and the execution was stopped, reportedly just four minutes before the execution was scheduled. Unfortunately, such last-minute review of the death sentence appears to have been successfully foreclosed in the case of Chen Tao.

Opacity (and even more so, total secrecy) surrounding post-conviction proceedings in capital cases and the timing of the execution also violates the dignity and the right to be treated humanely of both the convicted person and his family members.

As the Special Rapporteur on extrajudicial, summary or arbitrary executions concluded in the abovementioned report (at para. 37), “[t]here is no justification for post-conviction secrecy, and [...] a lack of transparency both undermines due process rights and constitutes inhuman and degrading treatment or punishment. Persons sentenced to death, their families, and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions, and executions.”

It is our responsibility under the mandate provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on

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

1. Are the facts alleged in the above summary of the case accurate?
2. Was Mr. Chen Tao assisted by lawyer during his trial and in the post-conviction proceedings? Did he have an opportunity to appeal his conviction? If so, when and how was his appeal disposed of?
3. On what grounds did the authorities decide not to inform Mr. Chen Tao's lawyer and family of his trial, conviction and execution?
4. Were the proceedings in Mr. Chen Tao's case in accordance with the laws of the People's Republic of China?

Response from the Government of China dated 6 April 2007

I. Chen Tao, male, born 20 February 1985, ethnic Han Chinese, from Hanyuan county in Sichuan province, lower secondary education, farmer, residential address: unit 2, Maiping village, Dashu township, Hanyuan county. For commission of the offences of wilful homicide and malicious damage to property he was sentenced to death and stripped of his political rights in perpetuity and, on 16 November 2006, he was executed.

The three other persons referred to in the communication that we have received are Cai Zhao, Liu Yong and Wang Xiujiao, all farmers in Dashu township, Hanyuan county in Sichuan province, who have all received sentences.

The Pubugou hydroelectric station on the Dadu river, which is situated in Hanyuan county, Ya'an municipality, in Sichuan province, on the boundary with Ganluo county in Liangshan prefecture, is a State priority construction project. On 3 November 2004, a number of the persons being relocated from the area of the hydroelectric dam in Hanyuan county decided that the compensation being paid to them was insufficient, and gathered at the power station to stage a sit-in, with a view to obstructing work on the dam. At noon that same day, Cai Zhao, Chen Tao, Liu Yong and Wang Xiujiao, bearing twisted iron bars and kitchen choppers, set off in pursuit of the armed police and public security officers who were on duty. After catching Zhang Zhiming, a police officer from the anti-riot squad of the Xichang city public security bureau, Cai Zhao struck him violently on the head with an iron bar and knocked him to the ground, whereupon Chen Tao, Liu Yong and Wang Xiujiao joined Cai Zhao in attacking Zhang Zhiming with iron bars, pounding him with rocks, kicking him and injuring him in other ways, fracturing his skull and causing loss of blood. They finally left when Zhang's life was hanging by a thread.

Cai Zhao, Chen Tao and the others then attacked a passenger coach of the Emei make, parked at that spot, with the registration number W 16995. Chen Tao set fire to the seats of the coach, which was then completely destroyed in the flames. After this, Chen Tao noticed another policeman going to the rescue of Zhang Zhiming, lying on the ground, so he rushed at him, brandishing his kitchen chopper, and chased him

away. He then turned back to Zhang Zhiming and slashed at him three times, kicked him ferociously with both feet, and then left.

Zhang Zhiming was rushed to hospital but efforts to save his life proved unavailing and he died. According to the forensic examination, Zhang Zhiming's death was caused by repeated blows to his head, chest and back with a heavy, club-like and irregularly shaped blunt instrument, which fractured his skull causing fatal craniocerebral injuries and led to closed hematomothorax. On 5 November 2004, the co-defendants Cai Zhao and Wang Xiujiao again gathered a mob to attack the Yayuan guest house, a public facility jointly operated by the provincial and city headquarters. After committing this offence, Chen Tao was apprehended and brought to justice.

In June 2005, the Sichuan Ya'an city people's intermediate court passed judgement, sentencing Chen Tao to death for the offence of wilful homicide and to deprivation of his political rights in perpetuity; for the offence of causing malicious damage to property it sentenced him to three years' fixed term imprisonment, and ruled that the death sentence was to be carried out and that he was to be stripped of his political rights in perpetuity.

After judgement was passed at first instance, Chen Tao refused to accept the court's verdict and lodged an appeal, on the following grounds: there were discrepancies in the evidence confirmed in the judgement of first instance; Chen Tao had shown a good attitude in admitting his guilt; he had helped the investigation and solving of his case; and he had provided information which had led to the unmasking of other suspected offenders in the same case. Zhang Zhiming's death had been due to head injuries, yet he himself had not struck Zhang in the region of the head making his offence one of homicide by indirect intent; Zhang Zhiming's death had been caused by a number of people, and Chen Tao had acted under instructions from others in committing his offence. Third, Chen Tao's defence counsel, the lawyer Feng Yubin from the Yazhou law office in Sichuan, argued that, while Zhang Zhiming may have died from his head injuries, there was no conclusive evidence demonstrating that Chen Tao had caused this by striking him three times and that, at the proceedings at first instance, no weapons used in the offence had been exhibited. He called for clemency to be shown to his client.

On 5 June 2006, the Sichuan provincial people's high court handed down its definitive verdict, dismissing the appeal and ruling that the original judgement should stand. The court found that the co-defendants Cai Zhao, Chen Tao, Liu Yong and Wang Xiujiao, motivated by dissatisfaction with the terms of the compensation awarded to people displaced by the Pubugou hydroelectric dam project and with the aim of obstructing work on the power station, had attacked armed public security police on duty at the site and, brandishing iron bars, kitchen choppers and lumps of rock, had attacked Zhang Zhiming, the public security policeman on duty at that spot, stabbing him and slashing at him, causing him fatal injuries, conduct which constituted the offence of wilful homicide, in aggravating circumstances and with severe consequences, an offence which, under law, had to be punished with severity. Chen Tao also set fire to a passenger coach, which was destroyed by fire, directly causing 50,901 yuan's worth of damage, categorized as a very high level of damage, causing his conduct to constitute the offence of malicious damage to property. It decided, in Chen Tao's case, to apply

the principle of joinder of punishments for multiple offences. The grounds supporting Chen Tao's appeal and the views put forward by his defence counsel did not tally with the facts ascertained in the investigation and the actual circumstances as demonstrated by the evidence, namely that Chen Tao and the others had kicked and attacked the deceased in the region of the head with blunt instruments, and were deemed to be untenable. As for the good attitude shown by Chen Tao in admitting his offence and his argument that Zhang Zhiming's death had been caused by a number of people, these factors were insufficient to warrant a more lenient sentence. Accordingly, it was decided to uphold the verdict of first instance, handing down a combined punishment for wilful homicide and malicious damage to property, whereby Chen Tao should be sentenced to death and stripped of his political rights in perpetuity. In accordance with the notice of the People's Supreme court authorizing people's high courts and military courts of the People's Liberation Army to review and approve certain cases involving the death penalty, the Sichuan provincial people's high court delivered its ruling that the death sentence should be carried out on Chen Tao and authorized the Ya'an people's intermediate level court to pronounce the judgement on its behalf on 17 November 2006.

II. Regarding the four questions in the communication which we have received, we provide the following responses.

1. "Are the facts alleged in the above summary of the case accurate?"

Statements in the communication to the effect that Chen Tao had been tried in secret and that his lawyers and family members were not notified of the trial and that, on 20 November 2006, Chen Tao's father, Chen Yongzhong, had received a court notice asking him to claim the ashes and had been asked to pay 50 yuan for the cost of his execution by shooting, are inconsistent with the facts.

This case was tried at first instance by the Ya'an city people's intermediate level court in Sichuan province, which, in accordance with the law, heard the proceedings in open court; the public prosecutor, the defendant and the expert witnesses all came to the court to attend the proceedings and members of the public were permitted to attend in the public gallery. After the proceedings at first instance, the defendant lodged an appeal. The Sichuan provincial people's high court formed a collegiate bench to hear the case at second instance. In compliance with the provisions of article 187 of the Chinese Code of Criminal Procedure, the court of second instance, once it had gone over the case-files, questioned the defendants, heard the arguments of the defence counsel, found that the facts of the case were clear and ruled that proceedings in the case should proceed in closed court. After the proceedings at second instance had concluded, the Sichuan provincial people's high court entrusted the Ya'an City people's intermediate level court to pronounce the judgement on its behalf and transmitted to it the legal documents. The Ya'an city people's intermediate level court, acting in accordance with the provisions of the law, three days prior to the passing of judgement, posted public notices and notified the family that they could visit the defendant.

On 16 November 2006, the Ya'an city people's intermediate level court, as part of the oversight proceedings conducted by the Ya'an city procurator's office, asked him whether he had any last words or wished to write any letters. That evening, a meeting

was arranged between Chen Tao and his father, Chen Yongzhong. On 17 November 2006, the Ya'an city people's intermediate level court, on behalf of the Sichuan provincial people's high court, delivered a public reading of the judgement at second instance in one of its own trial chambers and proceeded to carry out the instruction to implement the death sentence: Chen Tao's identity was verified and he was executed. Officials were assigned by the Ya'an city procurator's office to attend the scene of the execution and to oversee the proceedings. Upon completion of the execution, the Ya'an city people's intermediate court sent Chen Yongzhong, Chen Tao's father, an official notice inviting him to collect his son's ashes. On 4 December 2006, Chen Yongzhong called at the Ya'an city mortuary to collect Chen Tao's ashes.

2. "Was Mr. Chen Tao assisted by lawyer during his trial and in the post-conviction proceedings? Did he have an opportunity to appeal his conviction? If so, when and how was his appeal disposed of?"

During his legal proceedings at first and second instance, Chen Tao exercised his rights to defence in accordance with the law and received the services of a lawyer. During the proceedings at first instance, Chen Tao's appointed defence counsel was the lawyer Zhou Dehua, from the Li Yuan law office in Sichuan; during the proceedings at second instance, the lawyer assigned to defend him by Chen Tao's family was Feng Yubin, from the Yazhou law office in Sichuan. Throughout the proceedings, Chen Tao conducted his own defence and his defence lawyers also made defence submissions to the court on his behalf. Following their examination, the courts of both first and second instance found that Chen Tao's defence - both his own exculpatory self-defence and the defence put forward by his defence counsel - was not consistent with the facts as demonstrated by the evidence and did not hold water; accordingly, they were unable to accept it.

3. "On what grounds did the authorities decide not to inform Mr. Chen Tao's lawyer and his family of his trial, conviction and execution?"

Under the provisions of articles 163 and 164 of the Chinese Code of Criminal Procedure, judgements must be pronounced in public and the written judgement must clearly indicate the time limit for appeal and the name of the court that will hear the appeal. When Chen Tao's case was heard at first instance, the Ya'an city people's intermediate court indicated in the written judgement and directly notified Chen Tao that, if he did not accept the verdict of the court of first instance, he could lodge an appeal, within a period of 10 days, with the Sichuan provincial people's high court. Following pronouncement of the judgement, Chen Tao lodged an appeal. Acting on his behalf, Chen Tao's family appointed a lawyer to conduct his defence in the proceedings at second instance. After reaching its final decision in the case, the court of second instance instructed the court of first instance to publish and to serve the judgement. Acting in accordance with the provisions of the law, the court of first instance posted public notices three days before pronouncing judgement, then arranged the reading of the judgement to Chen Tao in public and handed him a written copy of the judgement of the court of second instance. Before the sentence was carried out, Chen Tao's family was informed and arrangements were made for Chen Tao's father, Chen Yongzhong, to see his son.

4. "Were the proceedings in Mr. Chen Tao's case in accordance with the laws of the People's Republic of China?"

The proceedings in Chen's case were in strict accordance with prescribed legal procedure and fully complied with the stipulations of Chinese law.

Colombia: Asesinato de Susana Patricia Galeano en Argelia, Antioquia

Violación alegada: Muerte a consecuencia de ataque o asesinato por las fuerzas armadas

Persona objeto del llamamiento: 1 mujer (menor)

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial (report 2006)

El Relator Especial aprecia la información proporcionada por el Gobierno de Colombia relativa a la muerte de Susana Patricia Galeano. El Relator especial agradecería que se le mantenga informando del progreso de las investigaciones adelantadas por la Fiscalía con relación al homicidio de la señora Galeano.

Carta de alegación del 24 de marzo de 2006 mandado con el Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía y la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias

Quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación al asesinato de la niña Susana Patricia Galeano Galeano así como de la violación sexual de otra niña de 14 años cometidas en la zona rural del municipio de Argelia, oriente del Departamento de Antioquia, y presuntamente perpetradas por miembros del ejército regular. De acuerdo con la información recibida:

El 15 de febrero de 2006 un grupo de soldados del batallón "Juan del Corral", adscrito a la Cuarta Brigada del ejército regular colombiano con sede en Medellín, se habrían presentado en la vereda "El Plan" del antemencionado municipio e iniciado la persecución contra un presunto miembro de la guerrilla. Posteriormente los soldados habrían entrado en la vivienda de la familia Galeano Galeano, ubicada en la misma vereda donde se encontraban solas dos menores de edad: una de 14 años, cuyo nombre se desconoce hasta el momento, y Susana Patricia, de 17 años. Se alega que los soldados habrían procedido a disparar contra esta última causándole la muerte. Según las denuncias, los soldados habrían tratado de convencer a la familia que el disparo que acabó con la vida de Susana Patricia lo había hecho el antemencionado supuesto miembro de la guerrilla y habrían exhortado a los familiares de la víctima a informar a las autoridades "que a la joven la había matado el guerrillero". Se informa también que los militares habrían presionado a diferentes integrantes de la familia, con el fin de evitar que estos denunciasen la verdad sobre la forma en que sucedieron los hechos. Se alega también que el cadáver de Susana Patricia habría sido dejado en el potrero de la finca hasta el día siguiente cuando, otros miembros del ejército lo habrían trasladado hasta el municipio de Sonsón con el fin de efectuar las

correspondientes diligencias judiciales, pese a que la jurisdicción de la vereda « El Plan » corresponde al municipio de Argelia, alegando que la fiscalía los habría autorizado a efectuar dicho traslado. Los Relatores Especiales expresamos nuestra preocupación por los miembros de la familia de Susana Patricia quienes, según la información recibida, se encuentran muy atemorizados y temen sufrir agresiones contra su vida e integridad personal por haber denunciado los citados hechos. El 12 de febrero de 2006 en la vereda de nombre “Gitana”, un soldado habría llegado a la vivienda de una familia campesina, y habría exigido que le entregaran a su hija, una niña de 14 años ante lo cual los padres se negaron. El soldado habría procedido a llevarse a la menor procediendo a violarla. La niña regresó posteriormente al domicilio de sus padres. Se alega que los padres de la menor también habrían sido agredidos físicamente cuando intentaron evitar que el soldado agrediera a la niña.

Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para garantizar el derecho de la persona mencionada a no ser víctima de cualquier forma de violencia por cuestiones de género, discriminación y abuso. A este fin, quisiéramos llevar a la atención de su Excelencia la Declaración sobre la eliminación de la violencia contra la mujer, aprobada por la Asamblea General de las Naciones Unidas, que establece que la mujer tiene derecho, en condiciones de igualdad, al goce y la protección de todos los derechos humanos y libertades fundamentales en las esferas política, económica, social, cultural, civil y de cualquier otra índole. Entre estos derechos figuran, (a) el derecho a la vida; (b) el derecho a la igualdad; (c) el derecho a la libertad y la seguridad de la persona; y (d) el derecho a igual protección ante la ley (artículo. 3).

Además, también estipula que todos los estados deberán proceder con la debida diligencia a fin de prevenir, investigar y, conforme a la legislación nacional, castigar todo acto de violencia contra la mujer, ya se trate de actos perpetrados por el Estado o por particulares (artículo 4 (c)).

En la resolución 2005/41 de la Comisión de Derechos Humanos se reafirma que los Estados están obligados a ejercer la diligencia debida para prevenir e investigar los actos de violencia contra mujeres y niñas y castigar a sus autores, así como dar protección a las víctimas, y que no hacerlo constituye una violación de sus derechos humanos y libertades fundamentales y obstaculiza o anula el disfrute de esos derechos y libertades.

La resolución subraya también la importancia y la necesidad imperiosa de contar con esfuerzos concertados encaminados a eliminar la impunidad de los actos de violencia contra las mujeres y las niñas en situaciones de conflicto armado, en particular mediante la persecución penal de los delitos sexistas y de violencia sexual, la instauración de medidas de protección y la prestación de asesoramiento y otro tipo de asistencia apropiada a las víctimas y testigos.

Quisiéramos instar a su Gobierno que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas de conformidad con los principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social según el

cual los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.(principios 9 a 19) . Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

Es nuestra responsabilidad de acuerdo con los mandatos que nos ha entregado la Comisión de Derechos Humanos, reforzados por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En nuestro deber de informar sobre esos casos a la Comisión, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con los dos casos, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de Colombia del 31 de mayo de 2006 (reproducido desde A/HRC/4/20/Add.1)

El Gobierno envió información relativa a una carta del 24 de marzo de 2006, relativo al asesinato de la niña Susana Patricia Galeano.

El gobierno informó que la fiscalía general de la nación, seccional de sonson (Antioquia) tuvo conocimiento de los hechos en los cuales perdió la vida la menor Susana Patricia Galeano, habiéndose iniciado la averiguación por el juzgado 24 de instrucción penal militar, con sede en el municipio de Bello (Antioquia). En este sentido, dicho ente judicial ya fue requerido para que presente un detallado informe sobre los medios de prueba allegados, y al estado de la investigación. La Fiscalía general de la nación se encuentra a la espera de la remisión de dicha información.

Por su parte, la procuraduría general de la nación manifestó que el procurador regional de

Antioquia tiene conocimiento del caso y ha requerido el ejército nacional, a la policía nacional y al departamento administrativo de seguridad (DAS) con el fin de que proporcionen información sobre las operaciones llevadas a cabo para encontrar a los autores del asesinato; sobre la iniciación de las acciones penales correspondientes y respecto de la adopción de las medidas pertinentes para proteger, tanto a la familia Galeano como a la población civil, con el fin de evitar que estos hechos se repitan.

Por último, el programa presidencial de derechos humanos y derecho internacional humanitario de la vicepresidencia de la república, ha solicitado información al inspector del ejército nacional, acerca de las investigaciones adelantadas. De igual forma puso en conocimiento del caso a la procuradora delegada para las fuerzas militares, con el fin de que se adopten las acciones pertinentes.

En una carta adicional del 3 de mayo de 2006 el programa presidencial de derechos humanos y DIH, una vez este programa tuvo conocimiento de los hechos ocurridos solicitó información al inspector del ejército nacional acerca del conocimiento que tuviese sobre el particular y de las investigaciones adelantadas. De igual forma, el 24 de marzo de 2006, puso en conocimiento del caso a la procuradora delegada para las fuerzas militares con el objeto que se adoptasen las acciones pertinentes.

En la misma fecha, ofició a la dirección seccional de fiscalías de Antioquia solicitando información sobre las investigaciones adelantadas. De acuerdo con la respuesta obtenida por esta fiscalía, en el caso de la niña Galeano resalta que.

“En atención al oficio de la referencia, relacionado con la muerte y violación de dos menores en el municipio de Argelia, le informo que del mismo se dio traslado al fiscalía delegado de la unidad de Fiscalías de Sonsón (Antioquia), quien es competente por jurisdicción para conocer de los hechos de competencia de los fiscales delegados ante los jueces penales del circuito, presentados en su municipio.

Esa delegada tuvo conocimiento de los hechos en los cuales perdió la vida la menor Susana Patricia Galeano, ocurridos en la vereda “El Plan”; habiéndose iniciado la averiguación por el Juzgado 24 de instrucción penal militar, con sede en el municipio de Bello. Mediante oficio 369 del 9 de marzo de 2006, dirigida a dicho ente judicial, se solicitó un informe detallado de los medios de prueba allegados y el estado de la investigación. Igualmente, se libró el oficio 370 del 9 de marzo a la personería de Argelia para que se envíe copia de la queja instaurada por la hermana de la víctima, así como de los demás medios probatorios que conduzcan a establecer las causas del deceso (...)

En lo referente al caso de la presunta violación de una menor de 14 años en zona rural de Argelia por parte de miembros del ejército pertenecientes al batallón “Juan del Corral” adscrito a la IV brigada con sede en Medellín, la dirección general de fiscalías de Antioquia informó que “se conoció que la personera de Argelia estaba adelantando la investigación de los hechos por lo que se le envió 371 de fecha marzo 9 de 2006, solicitándole el envío de la misma”. La fiscalía anotó también que está a la espera de las respuestas solicitadas con el fin de dar inicio a las respectivas investigaciones.

Respuesta del Gobierno de Colombia del 13 de agosto de 2007

La Dirección Nacional de Atención y Trámite de Quejas de la Defensoría del Pueblo, informó que en dicha Defensoría fueron recibidas quejas por presuntas ejecuciones extrajudiciales, dentro de la cual se encontraba la de Susana Patricia Galeano, ocurrida el 15 de Febrero en el Municipio de Argella.

Así mismo, con ocasión a las denuncias recibidas, dicha dependencia solicitó a la Fiscalía General de la Nación el inicio de la investigación penal correspondiente para sancionar a quienes resultaren responsables.

Por su lado, la Fiscalía informó que por dichos hechos, la Justicia Penal militar inicio las diligencias 141-2006 y 028, disponiendo el 16 de febrero de 2006 apertura de investigación, ordenando vincular mediante indagatoria al personal militar que directamente participó en el enfrentamiento y al comandante del operativo militar, esto es el Cabo Segundo Alberto Méndez Pinzon y a los soldados Fabio Alejandro Piernagorda y Juan Carlos Jiménez Loiza.

Las diligencias allegadas a la Fiscalía 18 Especializada, muestran que por los mismos hechos la Fiscalía 120 seccional de Sonsón inició las previas 4265 dentro de las que promovió colisión positiva de competencia en relación con la muerte de la menor civil al considerar que ella no era parte de las fuerzas enfrentadas, que no habla certeza de que su muerte hubiere ocurrido por un proceder imputable a los miembros del Ejército en desarrollo de actividades inherentes a su condición y porque no estaba claro si fueron los miembros del Ejército o los subversivos los autores de la muerte de esa persona.

Por esas razones, la Fiscalía reclamó competencia para investigar exclusivamente la muerte de la menor Susana Patricia Galeano, ante lo cual el Juez Octavo de Brigada en auto de junio de 2006 aceptó la procedencia de la petición de la Fiscalía Seccional de Sonsón, decretó la ruptura de la unidad procesal y compulsó las copias pertinentes para que la Fiscalía investigará la muerte de Susana Patricia Galeano.

La Fiscalía 18 Especializada, tuvo conocimiento de la investigación el 7 de noviembre de 2006, dispuso la práctica de varias pruebas y mediante providencia de enero 17 de 2007, resolvió la situación jurídica de los procesados, discutiéndose en esa oportunidad la necesidad o no, de imponer a los sindicados medida de aseguramiento de detención preventiva, teniendo en cuenta la ausencia de elementos probatorias que la justificaran.

La Fiscalía continuará adelantando diligencias tendientes al esclarecimiento de los hechos materia de la investigación.

Colombia: Muertes durante manifestación en el Departamento del Cauca en mayo 2006

Violación alegada: Muerte a consecuencia de uso excesivo de la fuerza por las fuerzas de seguridad; Desaparición forzada

Persona objeto del llamamiento: 2 hombres (manifestantes; 1 menor y 1 indígena)

Carácter de la respuesta: Respuesta cooperativa pero incompleta

Observaciones del Relator Especial

El Relator Especial aprecia la información proporcionada por el Gobierno de Colombia relativa a la muerte del señor Pascue Canas y al uso de la fuerza por las fuerzas de seguridad. El Relator especial agradecería que se le mantenga informando del progreso de las investigaciones adelantadas por el Gobierno con relación a la muerte del señor Pascue Canas.

Llamamiento urgente del 31 de mayo de 2006 mandado con el Relator Especial sobre la tortura, de Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, de Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, y de Representante Especial del Secretario-General para los defensores de los derechos humanos

Quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación con una serie de incidentes ocurridos con motivo de una serie de manifestaciones celebradas en los departamentos del Cauca, Nariño, Neiva y Huila en el marco de la “Gran Cumbre de Organizaciones Sociales en defensa de la vida, del territorio, la dignidad, la autonomía y la soberanía nacional”. De acuerdo con la información recibida:

El 14 y 15 de mayo de 2006, más de 50 000 personas de distintos sectores de la sociedad civil colombiana se habrían congregado en diversos puntos del país para protestar de manera pacífica contra la firma del Tratado de Libre Comercio, la re-elección de Álvaro Uribe Vélez y la adopción de la “Ley de Justicia y Paz”.

Según se informa, el 15 de mayo de 2006, en la ciudad de Popayán, capital del departamento del Cauca, el Escuadrón Móvil Antidisturbios (ESMAD) de la Policía Nacional habría intentado disolver por la fuerza la concentración de las más de 1000 personas que se manifestaban frente a las instalaciones del SENA (una escuela técnica). Como resultado de dicha intervención policial, varias personas habrían resultado heridas, algunas por arma de fuego. Otros manifestantes, que habían decidido ocupar el edificio del SENA, habrían sido desalojados por la fuerza lo que habría provocado un enfrentamiento con las fuerzas del orden que se habría prolongado hasta altas horas de la madrugada. Según los informes, integrantes del ESMAD habrían entrado en el barrio de la Paz, donde se encontraban algunos manifestantes a los que habrían atacado con gases lacrimógenos. Como resultado de esta intervención policial, al menos 60 manifestantes y residentes del barrio, habrían resultado heridos, y más de 40 personas habrían sido detenidas, entre ellas 5 menores de edad.

El 16 de mayo de 2006, alrededor de 15.000 manifestantes congregados en la finca La María, en la localidad de Piendamó, departamento del Cauca habrían ocupado un tramo de la autopista Panamericana. El ESMAD, la policía de carretera y el Ejército Nacional habrían intervenido con acciones aéreas y por tierra. En el transcurso de esta intervención Pedro Mauricio Coscúe de etnia indígena, habría sido asesinado, y más de 100 personas, en su mayoría

indígenas, habrían resultado heridas, entre ellas 7 menores de edad. Además, Misael Vizcunda Chocué, de entre 16 y 17 años, habitante de la vereda San Pablo, Resguardo Indígena Corinto Tierra Adentro se encontraría desaparecido. Según los informes, al menos 24 manifestantes habrían sido detenidos durante los enfrentamientos, entre ellos los periodistas Marcelo Forero, del periódico virtual "El Turbión", Jesús López y Carmen Eugenia León, de la emisora de la oficina de comunicaciones del resguardo indígena de La María y Richard Calpa, director de la emisora La Libertad del municipio de Totoró. Según los informes, los 4 periodistas habrían sido liberados sin cargos el 22 de mayo de 2006. Se alega también, que las fuerzas del orden público habrían confiscado los materiales de grabación de diversos miembros de la prensa.

El 15 de mayo en Neiva, capital del departamento del Huila, miembros del equipo periodístico del programa de televisión TV novedades habrían sido agredidos por varios encapuchados, quienes además les habrían sustraído el material de grabación. Los hechos habrían ocurrido en las instalaciones de la Universidad Surcolombiana., donde los periodistas se encontraban cubriendo la ocupación de las instalaciones de este centro educativo por parte de varias comunidades indígenas.

El 16 de mayo de 2006 miembros del ESMAD habrían disparado contra los manifestantes cuando trataban de detener una movilización campesina e indígena en el lugar conocido con el nombre de El Pital, cerca de Mondomo, Departamento del Cauca.

Finalmente, se alega que la fuerza pública habría agredido a los manifestantes que se encontraban bloqueando la carretera Panamericana a la altura del sector conocido como "Remolinos" en el Departamento de Nariño, resultando gravemente heridos los Sres. Bayardo Rosero, quien habría sido herido en el abdomen con arma de fuego y Dagoberto Mestra, quien se encontraría en estado crítico.

Los Relatores Especiales expresan su preocupación ante la posibilidad de que en los antemencionados incidentes, las fuerzas del orden público hayan podido haber incurrido en el uso excesivo de la fuerza en el ejercicio de sus funciones.

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

Asimismo, quisiéramos llamar la atención del Gobierno de su Excelencia sobre las siguientes normas y principios que son particularmente significativos con respecto a las denuncias mencionadas precedentemente:

- Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, los principios 4 y 9 a 19 obligan a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte. Los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

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

Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 12 párrafos 2 y 3 estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.
- el artículo 5 apartado a) estipula que a fin de promover y proteger los derechos humanos y las libertades fundamentales, toda persona tiene derecho, individual o colectivamente, en el plano nacional e internacional a reunirse o manifestarse pacíficamente.

Nos permitimos también hacer un llamamiento urgente al gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos, y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Político: "Todo individuo tiene derecho a la libertad de opinión y de expresión; este derecho incluye el no ser

molestado a causa de sus opiniones, el de investigar y recibir informaciones y opiniones, y el de difundirlas, sin limitación de fronteras, por cualquier medio de expresión".

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

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

Es nuestra responsabilidad, de acuerdo con los mandatos que nos ha entregado la Comisión de Derechos Humanos y que están reforzados por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas por las víctimas?
2. ¿Fue presentada alguna queja?
3. En el caso de que los hechos descritos en las alegaciones sean ciertos, y los miembros de la policía presuntamente implicados en los antemencionados incidentes hayan sido ya identificados, por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de Colombia del 26 de julio de 2007

La respuesta del Gobierno da descripciones detalladas sobre cada una de las manifestaciones en el Departamento del Cauca en Mayo 2006. Sobre las alegaciones de uso excesivo de la fuerza por las fuerzas de seguridad, de la muerte de Pedro Mauricio Coscúe y de la desaparición de Misael Vizcunda Chocué, el Gobierno informo:

- Finca La Maria, municipio de Piendamó, Vía Panamericano (Departamento del Cauca)

Procedimiento e informe de Policía Nacional: Violentos bloqueos de manifestantes:

Sobre el particular, la referida autoridad informó que desde el 12 de mayo de 2006 los indígenas estuvieron concentrados en la Finca La María, donde se celebraba la

Cumbre de Organizaciones Sociales, cuyo fin era tratar la problemática de los grupos étnicos.

En horas de la mañana del 16 de mayo de 2006, cerca de 2000 indígenas de los 6000 que se encontraban en la Cumbre, bloquearon la Vía Panamericana con árboles, piedras, llantas, vehículos pinchados, gallinaza y otros elementos que fueron sacados de las viviendas de los campesinos vecinos de La María. Siendo las 10: 30 a.m., un grupo del ESMAD de la Policía que se encontraba en la parte alta de un cerro en el costado oriental de la vía, fue copado por los amotinados, por lo que debió efectuar un repliegue de emergencia.

La multitud comenzó a arrojar todo tipo de elementos contundentes como rocas, papas explosivas y bombas incendiarias (molotov) contra una tanqueta policial -que sirve de protección del personal policial de contención, -la cual quedó estancada en la vía de acceso a la vereda-, por lo que el procedimiento policial se concentró en no permitir que la multitud la incinerara o destruyera. El referido elemento pudo ser retirado en horas de la tarde, no obstante este resultó prácticamente destrozado a pesar de ser blindado, como causa de impactos de probables armas de fuego, teniendo en cuenta varias detonaciones que fueron escuchadas y que provendrían del sector donde se encontraban varios encapuchados.

En la tarde, el ESMAD de la Policía de Medellín, procedió a intentar el desalojo de los indígenas que bloqueaban la vía, quienes se enfrentaron violentamente con la autoridad, la cual logró retirarles a la parte alta del Resguardo, desde donde nuevamente cerca de 4000 indígenas lanzaron una violenta embestida que obligó a la autoridad a retroceder, no obstante, en la medida en que se retrocedió se intensificó la agresión hacia los uniformados, a quienes los manifestantes intentaron cercar, armados de hondas, caucheras, palos, machetes, bombas molotov y otros elementos, valiéndose de las fincas aledañas a la carretera y prendiendo fuego a los árboles y rastrojos para evitar el retroceso de los policías, contexto en el cual resultaron heridos ocho policías que fueron empujados por un barranco de aproximadamente cinco metros.

Adicionalmente, en el mencionado repliegue, los indígenas secuestraron a tres patrulleros de la policía a quienes hurtaron los equipos antimotín, cascos, escudos, bastones de mando, armaduras, grenadas, máscaras antigas y un trufly, y fueron conducidos a la parte alta de la montaña del resguardo de La María.

En vista de lo anterior, el 16 de mayo de 2006 fue imposible desalojar la vía, la cual permaneció bloqueada por los indígenas.

[....]

Sobre un Presunto homicidio y una desaparición forzada:

La Policía Nacional informó lo siguiente:

Que únicamente tuvo conocimiento de la muerte de un indígena de nombre JOSE PEDRO PASCUE CANAS, al arribar a la caseta del Resguardo La María, y después

de los hechos anteriormente referidos, en los que unos policías fueron arrojados a un barranco, el 16 de mayo de 2006.

Las circunstancias de la muerte del Señor PASCUE - persona que podría ser la misma mencionada en la comunicación de Su Excelencia, presuntamente de nombre PEDRO MAURICIO COSCUE - son objeto de investigación penal por la Fiscalía Seccional de Piendamó (Departamento del Cauca), e inicialmente indicarían que la persona en mención murió como resultado de las lesiones producidas, al enfrentarse cuerpo a cuerpo, junto con varios indígenas y campesinos, con los miembros de la Policía Nacional.

La Policía Nacional precisó que igualmente no se ha tenido conocimiento ni se ha recibido denuncia alguna sobre la desaparición del indígena MANUEL VIZCUNDA CHOCUE de 16 o 17 años de edad. De igual manera, tampoco se ha notificado de la existencia de acciones contenciosas o administrativas contra la Policía Nacional sobre el particular.

- Investigaciones disciplinarias:

Sin perjuicio de lo anteriormente expresado, ante la Oficina de Control Disciplinario Interno del Departamento de Policía de Cauca, cursa investigación disciplinaria contra algunos oficiales y suboficiales del ESMAD de la Policía, en relación con el caso del Señor PASCUE, la cual se encuentra en práctica de pruebas.

Conclusion del Informe de la Policía Nacional acerca de las situaciones descritas.

La referida autoridad precisó que la fuerza utilizada por el ESMAD en las aludidas situaciones, se encontró dentro del marco de cumplimiento de los Tratados Internacionales, y normas constitucionales, legales y reglamentarias de policía sobre el empleo de la fuerza y utilización de gases no letales como el lacrimógeno, humo y agua.

En ese sentido, cabe señalar que la intervención policial inicialmente desplegó el personal de la Policía, como una simple demostración de fuerza; luego empleó bastones de mando y utilizó agua y gases lacrimógenos, en vista del grado de violencia ejercido por los manifestantes.

De esta manera, como queda señalado, el uso de la fuerza fue el último recurso utilizado durante los procedimientos de la Policía Nacional, precisando que los medios empleados fueron los legalmente autorizados para el manejo y control de multitudes, ya que mientras los líderes de los manifestantes entablaron diálogo con las autoridades regionales, éstos ofrecieron resistencia a desbloquear las vías, tomándose agresivos y violentos contra el personal policial.

En los procedimientos los indígenas utilizaron armas y explosivos de fabricación casera, tales como: papas explosivas -que en su interior llevan metralla, puntilla, pedazos de vidrio, arandelas, pedazos de varilla-, bombas molotov- hechas con ACPM, gasolina y ácido-, lanzas y garrotes con alambre de púas y puntillas en las puntas; y caucheras y hondas con las cuales arrojaban balines y esferas de cristal.

En los referidos procedimientos resultaron retenidos ilegalmente tres patrulleros policías por parte de los indígenas -liberados el 19 de mayo y entregados a delegados de la ONU, y a un comisionado de la Defensoría del Pueblo- e igualmente resultaron lesionados decenas de suboficiales y oficiales con quemaduras, hematomas, heridas con arma blanca, fracturas y diversos traumatismos.

En lo que concierne a la Vía Panamericana, la referida autoridad precisó que se trata de una de las más importantes del territorio nacional, a través de la cual se movilizan grandes volúmenes de carga y pasajeros. En el contexto de los precitados hechos, el país se encontraba en campaña y preparativos electorales, aspectos que motivaron la orden del Gobierno de desbloquear la vía y garantizar el tránsito normal.

Por lo antes expresado, la Policía precisó que no son exactas las alegaciones realizadas por los manifestantes, cuya actitud violenta hizo necesario el uso legítimo y racional de la fuerza para restablecer la tranquilidad pública, teniendo siempre presentes los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de hacer cumplir la Ley, (adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en La Habana (Cuba) del 27 de agosto al 7 de septiembre de 1990).

De esta manera, los medios técnicos empleados por la Policía Nacional para enfrentar este tipo de situaciones estuvieron amparados por el artículo 2 de la referida norma, la cual prevé lo siguiente: 'Los gobiernos y organismos encargados de hacer cumplir la ley establecerán una serie de métodos lo más amplia posible y dotarán a los funcionarios cofrespondientes de distintos tipos de armas y municiones, de modo que puedan hacer un uso diferenciado de la fuerza y de las armas de fuego».

El referido artículo agrega: "Entre estas armas deberían figurar armas incapacitantes no letales para emplearlas cuando fuera apropiado, con miras a restringir cada vez más el empleo de medios que puedan ocasionar lesiones o muertes. Con el mismo objetivo, también debería permitirse que los funcionarios o encargados de hacer cumplir la ley cuenten con equipo autoprotector, por ejemplo, escudos, cascos, chalecos a prueba de balas y medios de transporte a prueba de balas a fin de disminuir la necesidad de armas de cualquier tipo".

De igual manera, el uso de los agentes químicos empleados para la dispersión de los manifestantes se encuentra amparado en la Convención sobre la prohibición del desarrollo, la producción, el almacenamiento y el empleo de armas químicas y sobre su destrucción de Naciones Unidas.

Al respecto, el artículo 30 del Código Nacional de Policía ordena: "Para preservar el orden público la Policía empleará sólo medios autorizados por la ley o reglamento y escogerá siempre, entre los más eficaces, aquellos que causen menor daño a la integridad de las personas y de sus bienes. Tales medios no podrán utilizarse más allá del tiempo indispensable para el mantenimiento del orden o su restablecimiento", aspectos que han sido regulados a través de varias disposiciones tales como las Circulares 033 de 1996 - "Consideraciones sobre el control policial de masas" -, 052 de 1996 - "El empleo de la Fuerza. El uso de armas" -, 003 de 1996 - "Empleo de las

fuerzas y sus limitaciones" -, Instructivo 041 de 2002- "El uso de la Fuerza" -, y Circular 070 de 1996 – “Actuación policial en control de disturbios”.

En aplicación de las referidas normas, existe la Fuerza Disponible de la Policía Nacional, como personal debidamente entrenado y capacitado para atender servicios que tienen que ver con el control de manifestaciones públicas, y disturbios civiles, así como el Escuadrón Móvil Antidisturbios o ESMAD, creado por Resolución de abril 1999, y basado en la Constitución Política de Colombia, el Código Nacional de Policía y demás disposiciones de policía, cuyo fin es el de servir de apoyo a las unidades policiales a nivel nacional en la prevención y control de disturbios y manifestaciones, a través de personal altamente calificado en el manejo y conciliación de masas, en la protección de los derechos fundamentales que permitan restablecer el orden, la seguridad y la tranquilidad de los habitantes de Colombia.

De igual manera, el Código de Conducta para funcionarios encargados de hacer cumplir la ley, aprobado por la Resolución 34/13 de la Asamblea General de Naciones Unidas autoriza el uso de gases lacrimógenos, aspecto reglamentado por la Circular 070 de 1996.

En atención a lo anterior, el ESMAD de la Policía Nacional aplica los principios básicos sobre el empleo de la fuerza, con el objeto de restringir cada vez más el empleo de los medios que puedan ocasionar lesiones o muertes, y para tal efecto utiliza cartuchos de gas, granadas de gas, granadas fumígenas o de humo, las cuales no causan ningún daño al ser humano. El equipo utilizado consiste en un escudo antimotín, escudos blindados, máscaras antigas, protectores antimotín (armaduras), overoles y pasamontañas antiinflamables, guantes, protector corporal y bastón tanga, siendo muy importante precisar que las armas de fuego no hacen parte del equipamiento de los integrantes del ESMAD.

Otras investigaciones disciplinarias:

Finalmente, la Procuraduría General de la Nación informó que por los diferentes hechos ocurridos en las localidades de los Departamentos de Nariño y Cauca, cursan investigaciones disciplinarias contra miembros del ESMAD, en las referidas seccionales de la precitada entidad, en etapa de indagación preliminar.

Colombia: Asesinatos contra los Wayú

Violación alegada: Muertes a consecuencia de ataque o asesinato por fuerzas de seguridad; Impunidad

Persona objeto del llamamiento: 3 hombres (indígenas; 1 menor)

Carácter de la respuesta: Respuesta cooperativa pero incompleta

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia por la información que ha proporcionado relativa a la muerte de Javier Pushaina, Luis Ángel Fince Iguana, y Gaspar Cambar Ramirez. El Relator Especial preguntará que se le mantenga

informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

Carta de alegación del 17 de julio de 2006

Quisiera llamar la atención urgente de su Gobierno la información que he recibido en relación con la Ejecución Extrajudicial de tres indígenas Wayuús y otras violaciones de derechos humanos perpetradas contra otros miembros de la misma comunidad por efectivos de las fuerzas armadas colombianas. De acuerdo con la información recibida:

El 21 de enero de 2006, miembros del ejército colombiano habrían disparado indiscriminadamente contra más de 100 indígenas de la comunidad Wayúu, que se encontraban celebrando una fiesta en el corregimiento de Ware Ware (Guasimal), ubicado en el municipio de Albania, departamento de la Guajira. Como producto de los disparos propinados por el ejército habrían muerto los señores **Javier Pushaina**, de 28 años de edad, **Luis Ángel Fince Iguana**, de 18 años de edad, y el niño **Gaspar Cambar Ramirez**, de 16 años de edad. Adicionalmente, habría sido golpeada la señora **Irene López** (quien se encontraba embarazada en el momento de los hechos) y por los impactos de bala, dos personas más habrían resultado heridas.

Según la información recibida, los efectivos del ejército aparentemente habrían alterado evidencia y dejado municiones de fusil en el lugar de los hechos para alegar la presencia de miembros de las FARC-EP y el desarrollo de un enfrentamiento armado y justificar su operativo.

De acuerdo a la información recibida, en el Juzgado 20 de instrucción Penal Militar cursa actualmente una investigación preliminar contra los miembros del ejército que participaron en este operativo. En este contexto, quisiera expresar mi preocupación por el hecho de que la investigación de estos casos haya sido asumida por la jurisdicción penal militar, con desconocimiento de los principios internacionales sobre la materia y de la propia jurisprudencia constitucional colombiana.

En este contexto, deseo llamar la atención de su Gobierno sobre las observaciones finales del Comité de Derechos Humanos relativo al quinto informe periódico de Colombia (CCPR/CO/80/COL) del 26 de mayo de 2004, y en particular sobre su párrafo 16 según el cual “al Comité le preocupa que los tribunales militares sigan investigando delitos cometidos por el personal militar que implican tortura, (...) ejecuciones sumarias y arbitrarias, no obstante su anterior ineficacia para resolver esos crímenes y de la decisión de la Corte Constitucional que otorgó jurisdicción sobre tales crímenes a los tribunales ordinarios (artículos 6,7, y 9, en conjunto con el artículo 2). Asimismo, quisiera señalar al Gobierno de su Excelencia que el Comité recomendó en el mismo párrafo que “El Estado parte debería asegurar que los tribunales ordinarios investiguen y juzguen dichos crímenes y que todos los elementos de las fuerzas armadas cooperen en dichos procedimientos. Las personas investigadas por tales delitos deberán ser suspendidas del servicio activo durante la investigación y el proceso de estos casos”.

De acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos, mandato reforzado por las resoluciones pertinentes de la Asamblea General y del Consejo de Derechos Humanos, es mi responsabilidad intentar conseguir clarificación

sobre los hechos llevados a mi atención. En mi deber de informar sobre esos casos al Consejo de Derechos Humanos, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones?
2. ¿Fue presentada alguna queja por parte de las víctimas o sus familiares?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos efectuados a los heridos y de las autopsias practicadas a Javier Pushaina, Luis Angel Fince Iguana e Irene López. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas.
5. Se han tomado medidas para que la investigación en curso sea retirada de la Justicia Penal Militar y puesta en conocimiento de la Justicia Ordinaria? ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
6. Por favor, indique si se ha otorgado algún tipo de compensación a las víctimas o sus familiares. En caso afirmativo, ¿Cuál es la naturaleza y cantidad de esa compensación? Si no se les ha compensado, ¿Cuáles son los motivos?
7. ¿Cuales son las acciones tomadas o planeadas para prevenir la repetición de tales incidentes en el futuro y para promover y proteger los derechos de todos los miembros de la comunidad indígena Wayúu?

Respuesta del gobierno de Colombia del 24 de abril de 2007

Sobre el particular, es importante precisar que la Comisión Interamericana de Derechos Humanos – CIDH-, remitió al Estado una petición en relación con los mismos hechos descritos en la nota de Su Excelencia, sobre los cuales el Gobierno de Colombia respondió al a CIDH el 11 y el 17 de enero de 2007.

A continuación el Gobierno Nacional se permite precisar el contexto de los hechos que han sido denunciados ante Su Excelencia, a saber:

Contexto de los hechos ocurridos en la Ranchería Wasimal

Desde el año 2001 hasta la fecha, la Inspección Central de Policía del Municipio de Albania y la Fiscalía Seccional del municipio de Maicao recibieron una serie de denuncias instauradas por varios indígenas Wayúu, habitantes de distintos resguardos y rancherías de la zona, mediante las cuales informaron que fueron víctimas de los delitos de hurto, extorsión y lesiones personales, cometidos presuntamente por otros indígenas que vestían prendas privativas de la Fuerza Pública y que se encontraban ubicados en la Ranchería WASIMAL.

Tales hechos delictivos se intensificaron en el siguiente semestre de 2005 y con ellos se elevaron las denuncias penales ante las autoridades competentes. En varias denuncias, se indica a los Señores Javier Pushaina Palma y otras personas, como perpetradores de las conductas punibles señaladas. La población indígena se encontraba atemorizada y reclamaba la presencia y la actuación del Estado frente a estos sucesos.

De esta manera, el Departamento Administrativo de Seguridad (DAS) realizó diligencias previas, de las que se dedujeron indicios razonables de la presencia de las personas en mención, quienes usaban prendas de uso privativo de las fuerzas militares, se habían dedicado a las actividades delictivas descritas.

En virtud de lo anterior, en cumplimiento del deber constitucional y legal de las autoridades policiales y judiciales del Estado de garantizar la seguridad personal y los bienes jurídicos de los denunciantes y demás miembros del Pueblo Wayúu, la Fiscalía 004 delegada ante los Juzgados Penales del Circuito del municipio de Maicao, ordenó mediante resolución la realización de la diligencia de allanamiento y registro a la ranchería WASIMAL, con el fin de verificar las referidas situaciones y de obtener el material probatorio relevante, lo cual se realizó de conformidad con lo dispuesto en los Artículos 14 y 219 del Código de Procedimiento Penal.

El allanamiento en mención fue realizado por los agentes del Departamento Administrativo de Seguridad – DAS, el cual contó con la presencia de los delegados de varias entidades del Estado, entre ellos el referido Fiscal Seccional de Maicao, investigadores criminalísticos del Cuerpo Técnico de Investigación (CTI); detectives del Departamento Administrativo de Seguridad – DAS; personal del Ejército y del Grupo de Acción Unificado por la Libertad Personal (GAULA) – órgano interinstitucional integrado por miembros de las mencionadas autoridades; así como con presencia permanente de una funcionaria delegada del Ministerio Público con el fin de verificar la legalidad de la operación.

De conformidad con informes de la referida Unidad de Fiscalía 004 del municipio de Maicao, así como de la Décima Brigada del Ejército Nacional, las autoridades se desplazaron en vehículos, hacia la Ranchería Wasimal. Habiendo desembarcado y cerca del lugar, el grupo de avanzada de la operación, visualizó un grupo de hombres ubicados fuera de las casas de la Ranchería, portando armas de largo alcance como fusiles y escopetas, por lo que se requirió ubicarse estratégicamente para aproximarse a la Ranchería, y así realizar el allanamiento, garantizando la seguridad de todo el personal a cargo del operativo. En el momento en que las autoridades se aproximaron a la Ranchería y se identificaron como Ejército Nacional, los individuos armados habrían hecho caso omiso a ese llamado, realizando disparos de fusil y escopeta, motivo que obligó a las autoridades a reaccionar de la misma manera, generando un enfrentamiento armado – de lo cual el gobierno de Colombia informó en su oportunidad a Su Excelencia – lo que produjo tres bajas de parte del grupo armado que se encontraba en la Ranchería.

Inmediatamente se ordenó acordonar el área, por lo que el referido Fiscal 004 Seccional, procede a realizar la diligencia de registro, encontrando material de guerra, escopetas y munición de diversos calibres en los ranchos de paja de la Ranchería, y ordenando la captura de tres personas que se encontraban presentes en los mencionados inmuebles.

El referido Fiscal procedió a inspeccionar los cuerpos de las personas que habrían muerto al enfrentarse con la Fuerza Pública, quienes tenían las siguientes identidades:

- Gaspar Cambar Ramirez: Indocumentado. Se le encontraron varias mochilas con cartuchos de diferentes calibres y una escopeta.
- Javier Pushaina Pushaina: Cerca de él se encontró una escopeta de repetición, con un cartucho en la recámara y dos en la contrarecámara.
- Luis Angel Fince Ipuana. Cerca de él se encontró un fusil sin número ni marca, y una mochila con cartuchos. También se le encontró una cédula con el nombre de otra persona de nombre Nectario Cambar Ramirez, no obstante su verdadera identidad corresponde a la del Señor Fince Ipuana, de acuerdo con información suministrada por la madre de esta persona al Fiscal de turno, así como del acta de nacimiento del difunto.

Proceso penal vigente y en ejecución

Desde el 27 de enero de 2006 se dio inicio a una investigación penal preliminar por parte del Juzgado 20 de Instrucción Penal Militar. Durante esta etapa procesal, el Juez practicó un número considerable de diligencias probatorias, técnicas y recepción de testimonios, con el propósito de avanzar en el esclarecimiento de los referidos hechos. Se destaca que dentro del acervo probatorio obran los informes técnicos de necropsia de las precitadas personas, realizados por la Unidad del municipio de Malcao (Departamento de la Guajira) del Instituto Nacional de Medicina Legal y Ciencias Forenses, que concluyen que las personas fueron dadas de baja en enfrentamiento armado con la Fuerza Pública.

El 20 de junio de 2006 la Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario de la Fiscalía General de la Nación – la cual tiene como objetivo fundamental investigar y acusar a los presuntos infractores de la ley penal, por los más graves infracciones a los Derechos Humanos y al DIH -, designó especialmente un Fiscal ante los Jueces Penales del Circuito Especializado, adscrito a la referida Unidad con sede en la ciudad de Barranquilla (Departamento del Atlántico), con el fin de adelantar hasta la culminación la investigación penal por los referidos hechos.

Durante este trámite, la Procuraduría General de la Nación designó un Procurador Jurisdiccional Penal, con el fin de que en calidad de Agente Especial asumiera la representación del Ministerio Público dentro de la actuación judicial cursante ante la referida Fiscalía.

Posteriormente, y en virtud de que tanto el precitado Juez de Instrucción Penal Militar, como la Fiscalía 32 de la Unidad de Derechos Humanos y DIH de la Fiscalía General de la Nación, se consideraron simultáneamente competentes para darle trámite al caso particular, la referida Fiscalía planteó un conflicto de colisión de competencias positiva ante el Consejo Superior de la Judicatura, con el objeto de que las investigaciones penales se retiraran de la Justicia Penal Militar, y en consecuencia se asignara su conocimiento exclusivamente a la Justicia Ordinaria.

Al respecto, el 23 de noviembre de 2006 el Consejo Superior de la Judicatura dirimió el mencionado conflicto de colisión de competencias, delcarando que el conocimiento del presente caso debía recaer en la Fiscalía 32 Especializada de Derechos Humanos y DIH en mención, entidad que actualmente conoce de los hechos objeto de comunicación de Su Excelencia.

Solicitudes de los familiares de las personas precitadas

La Décima Brigada del Ejército Nacional, informó que en relación con los hechos referidos por Su Excelencia, las presuntas victimas no han hecho uso de la acción de reparación directa, mecanismo por el cual se exige la responsabilidad patrimonial del Estado, en los casos en que se atribuya a ete un dano antijuridico por acción u omisión, de acuerdo con el Artículo 90 de la Constitución Política de Colombia.

No obstante, es importante precisar que la Senora Nuris Pushaina Pushaina a través de apoderado se constituyó como parte civil dentro del mencionado proceso penal, con el fin de obtener un resarcimiento por danos y perjuicios presuntamente ocasionados con los hechos materia de investigación. Cabe anotar, que el precitado cambio de jurisdicción no afecta dicha constitución, ni los derechos de las victimas a la reparación en el evento que prospere la acción penal.

Proceso Disciplinario

El 4 de mayo de 2006, la Oficina de Instrucción del Ejército Nacional – Grupo GAULA – Guajira inició investigación preliminar, con el fin de establecer una presunta responsabilidad disciplinaria de los militares involucrados en la operación militar.

El 27 de julio de 2006 la Delegada Disciplinaria para la defensa de los Derechos Humanos de la Procuraduría General de la Nación ordenó suspender el referido proceso. En consecuencia, el proceso disciplinario se encuentra en estado de investigación, a cargo de la referida Delegada de la Procuraduria.

Colombia: Muertes y Amenazas de Muerte contra Líderes Sindicales

Violación alegada: Impunidad y amenazas de muerte

Persona objeto del llamamiento: 3 hombres

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial aprecia la la información proporcionada por el Gobierno de Colombia por relativa a las muertes y amenazas contra líderes sindicales. El Relator Especial preguntará que se le mantega informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

Llamamiento urgente del 15 de noviembre de 2006 mandada con la Representante Especial del Secretario-General para los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación con las amenazas de muerte en contra de los Señores Medardo Cuesta y Oswaldo Cuadrado, integrantes de la junta directiva del Sindicato Nacional de Trabajadores de la Industria Agropecuaria (SINTRAINAGRO); así como de las muertes de los Señores Carlos Arciniegas Niño, miembro de SINTRAINAGRO, y Jesús Marino Mosquera, líder de dicho sindicato y miembro de la Comisión Obrero Patronal en Urabá. SINTRAINAGRO promueve y protege los derechos de los trabajadores agropecuarios.

De acuerdo con la información recibida:

El 26 de octubre de 2006, al volver a casa el Sr. Cuesta habría encontrado unos folletos que contenían amenazas de muerte en contra suya y del Sr. Cuadrado. Según los informes, dos hombres encapuchados dejaron los folletos en su casa, situada en el municipio de Apartadó (Departamento de Antioquia).

Por otra parte, el 11 de octubre de 2006, en la madrugada, el Sr. Jesús Marino Mosquera habría muerto después de recibir varios impactos de bala, cuando se dirigía a su lugar de trabajo en el municipio de Carepa (Departamento de Antioquia).

Según los informes, el Sr. Carlos Arciniegas Niño, otro dirigente de SINTRAINAGRO en Barrancabermeja, desapareció a fines del año pasado. Se nos informa que el 2 de enero de 2006 se descubrió su cadáver amarrado, con señales de tortura y tres impactos de bala, en la vía que conduce de Barrancabermeja a Puerto Wilches (Santander).

Se expresa preocupación por las amenazas de muerte en contra de los Sres. Cuesta y Cuadrado, y se menciona que dichas amenazas pueden representar un intento de disuadir a los miembros de SINTRAINAGRO de continuar con su trabajo. Además, se teme que los Sres. Jesús Marino Mosquera y Carlos Arciniegas Niño hayan sido asesinados debido a su trabajo en defensa de los derechos humanos. En general, se teme que los ataques y actos de hostigamiento en contra de los integrantes del SINTRAINAGRO estén relacionados con sus actividades en defensa de los derechos humanos, en particular los derechos de los trabajadores agrícolas.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de su Excelencia para que considere las normas fundamentales enunciadas en el artículo 6 del Pacto Internacional de Derechos Civiles y Políticos: “El derecho a la vida es inherente a la persona humana. Este derecho estará protegido por la ley. Nadie podrá ser privado de la vida arbitrariamente”. Deseamos también llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

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

Además, quisiéramos referirnos a los artículos siguientes:

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

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

Asimismo, quisiéramos llamar la atención del Gobierno de su Excelencia sobre las siguientes normas y principios que son particularmente significativos con respecto a las denuncias mencionadas precedentemente:

- Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, los principios 4 y 9 a 19 obligan a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte. Los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación

haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

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

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

Es nuestra responsabilidad de acuerdo con los mandatos que nos ha entregado la Comisión de Derechos Humanos, reforzado por las resoluciones pertinentes de la Asamblea General y prorrogado por el Consejo de derechos humanos, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con estos casos, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de Colombia del 26 de febrero de 2007

En relación con las situaciones de los ciudadanos referidos, el Gobierno Nacional comunica a Su Excelencia lo siguiente:

Meduardo Cuesta y Oswaldo Cuadrado

Sobre el particular, es importante señalar que el Departamento de Policía de Antioquia impartió instrucciones a la Estación de Policía del municipio de Urabá (Departamento de Antioquia), con el fin de brindar la protección necesaria a favor de los ciudadanos en mención.

Por su parte, el Ministerio del Interior y de Justicia, informó que en la actualidad éstas personas cuentan con un esquema de seguridad colectivo, medios de comunicación y protección a cargo de la Policía Nacional.

En lo que atañe a las investigaciones por los presuntos hechos delictivos de que habrían sido víctimas estos ciudadanos, la Fiscalía General de la Nación informó que cursa investigación penal previa, por el delito de amenazas en el despacho del Fiscal 97 Seccional del municipio de Apartadó (Departamento de Antioquia), quien se dispone a escuchar a los ofendidos en declaración, diligencia que no ha sido posible llevar a cabo, a pesar de que los referidos ciudadanos han sido citados en varias ocasiones. En relación con estos hechos no se ha constituido parte civil alguna dentro del proceso.

Jesús Marino Mosquera

Al respecto, la Dirección Seccional de Fiscalías del Departamento de Antioquia informó que cursa desde el 17 de octubre de 2006, la investigación penal previa por el delito de Homicidio en contra de imputados por determinar, ante el Fiscal 72 Seccional del municipio de Chigorodó (del referido Departamento), la cual se encuentra en práctica de pruebas. En la actualidad, ninguna persona se ha constituido en parte civil dentro de la investigación.

En atención al caso en mención, el Programa Presidencial de Derechos Humanos solicitó al Fiscal General de la Nación remitir la investigación a la Unidad de Derechos Humanos de la Fiscalía General de la Nación, con el fin de que desde allí se adelanten las investigaciones pertinentes.

El Gobierno de Colombia estará atento al desarrollo de las investigaciones que por estos hechos vienen adelantando las diferentes autoridades nacionales, de cuyos resultados informaremos oportunamente a Su Excelencia.

Respuesta del Gobierno de Colombia del 2 de abril de 2007

Sobre el particular, la Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario de la Fiscalía General de la Nación, con sede en Bucaramanga (Departamento de Santander), adelanta investigación penal por el delito de homicidio en contra de la mencionada persona, en hechos ocurridos el 30 de diciembre de 2005, en el municipio de Puerto Wilches (Departamento de Santander).

La investigación en mención se encuentra en etapa previa, en práctica de pruebas tendientes al esclarecimiento de los hechos y a la identificación de los autores o partícipes del ilícito.

El Fiscal de conocimiento del caso verificó que el Señor Arciniegas Niño no pertenecía al Sindicato Sintrainagro al momento de su muerte, teniendo en cuenta que ésta persona trabajó desde el 16 de septiembre de 1986 hasta el 15 de noviembre de 2004. Su retiro laboral fue de carácter voluntario.

El Gobierno de Colombia estará atento al desarrollo de las investigaciones que por estos hechos vienen adelantando las diferentes autoridades nacionales, de cuyos resultados informaremos oportunamente a Su Excelencia.

Respuesta del gobierno de Colombia del 24 de agosto de 2007

Gestión de la Procuraduría General de la Nación:

La Procuraduría General de la Nación informó que no existen quejas disciplinarias por las presuntas amenazas a Medardo Cuesta y Oswaldo Cuadrado, ni por los presuntos homicidios de Carlos Arciniegas Niño y Jesus Marino Mosquera.

Sin perjuicio de lo anterior, la referida autoridad, en cumplimiento de su función preventiva, requirió al Alcalde Municipal del municipio de Apartadó, al Procurador Provincial, a la Policía Nacional y al General de la Brigada XVII Conjunta, con el fin de brindar la protección necesaria a los Señores Medardo Cuesta y Oswaldo Cuadrado.

En relación con la situación particular de los referidos ciudadanos, se informa lo siguiente:

Medardo Cuesta y Oswaldo Cuadrado

Sobre el particular, es importante señalar que el Departamento de Policía de Antioquia impartió instrucciones a la Estación de Policía del municipio de Urabá (Departamento de Antioquia), con el fin de brindar la protección necesaria a los ciudadanos en mención.

Por su parte, el Ministerio del Interior y Justicia, informó que en la actualidad éstas personas cuentan con un esquema de seguridad colectivo, medios de comunicación y protección a cargo de la Policía Nacional.

En lo que atañe a las investigaciones por los presuntos hechos delictivos de que habrían sido víctimas estos ciudadanos, la Fiscalía General de la Nación informó que cursa investigación penal previa, por el delito de amenazas en el despacho del Fiscal 97 Seccional del municipio de Apartadó (Departamento de Antioquia), quien se dispone a escuchar a los ofendidos en declaración, diligencia que no ha sido posible llevar a cabo, a pesar de que los referidos ciudadanos han sido citados en varias ocasiones. En relación con estos hechos no se han constituido parte civil alguna dentro del proceso.

Jesús Marino Mosquera

Al respecto, la Dirección Seccional de Fiscalías del Departamento de Antioquia informó que cursa desde el 17 de octubre de 2006, la investigación penal previa por el delito de Homicidio en contra de imputados por determinar, ante al Fiscal 72 Seccional del municipio de Chigorodó (del referido Departamento), la cual se encuentra en práctica de pruebas. En la actualidad, ninguna persona se ha constituido en parte civil dentro de la investigación.

Carlos Arciniegas Niño

Sobre el particular, la Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario de la Fiscalía General de la Nación, con sede en Bucaramanga (Departamento de Santander), adelanta investigación penal por el delito de homicidio en contra de la mencionada persona, en hechos ocurridos el 30 de diciembre de 2005, en el municipio de Puerto Wilches (Departamento de Santander).

La investigación en mención se encuentra en etapa previa, en práctica de pruebas tendientes al esclarecimiento de los hechos y a la identificación de los autores o partícipes del ilícito.

El Fiscal de conocimiento del caso verificó que el Señor Arciniegas Niño no pertenecía al Sindicato Sintrainagro al momento de su muerte, teniendo en cuenta que ésta persona trabajó desde el 16 de septiembre de 1986 hasta el 15 de noviembre de 2004. Su retiro laboral fue de carácter voluntario.

Colombia: Muerte de Leber Castrillón Sarmiento en el Departamento de Bolívar

Violación alegada: Muerte a consecuencia de ataque o asesinato por fuerzas de seguridad

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia por la información que ha proporcionado relativa a la muerte de Leber Castrillón, Alejandro Uribe y Arnulfo Pabon. El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno con relación a la muerte de Leber Castrillón y Alejandro Uribe

Carta de alegación del 24 de noviembre de 2006

En este contexto, quisiera llamar la atención de su Gobierno sobre la información que he recibido con relación a la muerte del agricultor Leber Castrillón Sarmiento y las heridas de bala causadas a uno de sus hijos, el niño Miguel Castrillón, en hechos ocurridos en el Municipio de Rio Viejo, Departamento de Bolívar.

Según la información recibida, el 24 de Octubre de 2006, miembros del Batallón Antiaéreo Nueva Granada dispararon contra el Sr. Leber Castrillón Sarmiento y sus dos hijos, quienes se encontraban pescando en la quebrada del corregimiento de Norosí en horas de la noche. El Sr. Castrillón murió como consecuencia de los disparos, mientras que su hijo Miguel resultó herido en una pierna.

El Coronel Gustavo Enrique Avendaño, Jefe del Estado Mayor de la Quinta Brigada, habría afirmado que dicho incidente era la consecuencia de un error militar. De acuerdo a su versión, el incidente habría tenido lugar en un sector donde el Ejército

adelantaba operaciones de registro y control militar. Al parecer, el Ejército habría abierto fuego contra el Sr. Castrillón y sus hijos al confundirlos con miembros de organizaciones al margen de la ley.

En estas circunstancias, deseo expresar mi profunda preocupación con relación a las denuncias que he venido recibiendo en contra de tropas del Ejército presentes en la región del sur de Bolívar. A través de una carta enviada el 8 de Noviembre de este año, llamé la atención de su Gobierno sobre la muerte del Sr. Alejandro Uribe, reconocido defensor de derechos humanos, quien habría sido asesinado el 19 de septiembre de 2006 por presuntos miembros del Ejército Nacional en el sur de Bolívar. Según nuestras fuentes, su muerte estaría relacionada con la denuncia que el Sr. Uribe efectuó ante la Defensoría del Pueblo, sobre la presunta ejecución extrajudicial del Sr. Arnulfo Pabón, un habitante del sur de Bolívar que habría sido asesinado el 18 de agosto de 2006 por supuestos miembros del Batallón Antiaéreo Nueva Granada.

Según las últimas informaciones, desde el 19 de septiembre miembros de las comunidades del sur de Bolívar se desplazaron al municipio de Santa Rosa para protestar por la muerte del Sr. Alejandro Uribe, y denunciar que las tropas del Ejército presentes en la región, han manifestado que “no responden por las personas que transiten por caminos después de las 6:00 p.m.”, y que “las personas no deben andar en grupo, pues es un peligro la reacción del Ejército contra ellos”.

Frente a esta grave situación, insto al Gobierno de Su Excelencia a que investigue el incidente que causó la muerte del Sr. Leber Castrillón Sarmiento, así como todas las alegaciones en contra de las tropas del ejército presentes en el sur de Bolívar, a que imponga las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas, y a que adopte todas las medidas necesarias para garantizar la vida y la seguridad de los habitantes de dicha región.

Finalmente, me gustaría mencionar algunos instrumentos del Derecho Internacional que resultan particularmente relevante en el contexto de esta carta.

Llamo la atención del Gobierno Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

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

Es mi responsabilidad, de acuerdo con los mandatos que me ha entregado la Comisión de Derechos Humanos y que están reforzados por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos llevados a mi atención. En mi deber de informar sobre esos casos al Consejo de Derechos Humanos, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refiere la alegación?
2. ¿Fue presentada alguna queja por las víctimas o sus representantes?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con la muerte del Sr. Leber Castrillón Sarmiento incluyendo los resultados de las autopsias llevadas a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, indique si los familiares del Sr. Leber Castrillón Sarmiento obtuvieron algún tipo de compensación a modo de indemnización.
6. Por favor indique las medidas adoptadas para garantizar que este tipo de hecho no se repitan.

Respuesta del Gobierno de Colombia dal 24 de agosto de 2007

La Procuraduría General de la Nación informó que cursan las siguientes investigaciones y gestiones disciplinarias:

Leber Castrillón Sarmiento: la Procuraduría Delegada para la defensa de los Derechos Humanos, adelanta estudio preliminar de la queja contra miembros por determinar del Batallón Antiaéreo Nueva Granada del Ejército Nacional.

Alejandro Uribe: Asesores del Despacho de Derechos Humanos adelantan investigación disciplinaria contra un Sargento del Ejército Nacional, la cual se encuentra en indagación preliminar en práctica de pruebas.

Arnulfo Pabon: Asesores del Despacho de Derechos Humanos adelantan investigación disciplinaria contra un Subteniente y dos soldados del Batallón Nueva Granada del Ejército Nacional.

Por su parte, la Fiscalía General de la Nación informó que los presuntos hechos de que fueran víctimas las precitadas personas, son de conocimiento de la Dirección Seccional de Fiscalías de Cartagena.

Adicionalmente, el Programa de Protección del Ministerio del Interior y de Justicia informó que no encontró solicitud alguna de protección por parte de los referidos ciudadanos.

Finalmente, en lo concerniente a la preocupación por la situación de seguridad en torno a las manifestaciones de la ciudadanía en rechazo por la muerte de Alejandro Uribe, la Policía Nacional informó que adoptó el dispositivo de seguridad, con el cual se garantizó el libre desarrollo de las actividades de protesta realizadas el 23 de septiembre de 2006, en el municipio de Santa Rosa, del sur del Departamento de Bolívar.

El Gobierno de Colombia estará atento al desarrollo de las investigaciones que por estos hechos vienen adelantando las diferentes autoridades nacionales, de cuyos resultados informaremos oportunamente a Su Excelencia.

Respuesta del Gobierno de Colombia del 9 de enero de 2008

Caso del Señor LEBER CASTRILLÓN:

En relación con la muerte del señor LEBER CASTRILLON, y las lesiones sufridas por su hijo, el menor MANUEL ENRIQUE CASTRILLON FONSECA, en hechos ocurridos el 24 de octubre de 2006, en el Corregimiento de Norosi, del Municipio de Rio Viejo, en el Departamento de Bolívar, el Juzgado 38 de Instrucción Penal Militar adelanta proceso penal con radicado No. 400, en contra de un Sargento Segundo y cuatro soldados del Ejército Nacional, en calidad de presuntos responsables de los delitos de Homicidio Culposo y Lesiones personales.

La vinculación de los investigados se efectuó en la misma fecha en que ocurrieron los hechos. A estas personas se les resolvió la situación jurídica, imponiendo medida de aseguramiento de detención preventiva, con beneficio de excarcelación en contra del sargento en mención, y absteniéndose de imponerla contra los demás presuntos implicados.

El proceso se encuentra actualmente en etapa de instrucción. Entre las diligencias practicadas en el curso del proceso se destacan las declaraciones del personal militar que intervino en los hechos investigados. Las valoraciones médicas, dos reconstrucciones diurnas y nocturnas, de los hechos en el sitio donde estos acontecieron; entrevistas a los pobladores del Corregimiento de Norosi, y demás pruebas pertinentes para el esclarecimiento del caso. Asimismo, la referida autoridad informó que consta en el proceso el protocolo de necropsia, fotografías del cadáver, necropsias, diligencias practicadas a los familiares de la víctima, y registro de defunción. De igual manera, se ha enviado en varias oportunidades al menor MANUEL ENRIQUE CASTRILLON FONSECA al Instituto de Medicina Legal, con el fin de establecer las lesiones sufridas.

Es importante informar que por los mismos hechos, el Asesor Jurídico en Derechos Humanos del Batallón Nueva Granada con sede en Barrancabermeja, Santander, adelanta indagación preliminar disciplinaria No. 014-06, la cual se encuentra en averiguación de responsables. En consideración, a que los hechos involucran como víctimas a personas civiles, la autoridad en mención cerró la etapa de instrucción y está atenta a dictar decisión de fondo.

No obstante, es relevante informar que el Comandante del Batallón Nueva Granada remitió al Juez de conocimiento del caso, un informe indicando la naturaleza de las ordenes que a través de programas radiales, propenden por el respeto de los Derechos Humanos y el Derecho Internacional Humanitario, las cuales son constantemente impartidas al personal de oficiales, suboficiales y soldados, comprometidos en la defensa del orden público, quienes desarrollan las diferentes misiones tácticas en la jurisdicción a cargo del Batallón en mención, y que constan de reglas que se sintetizan en el siguiente sentido:

- Prohibición de uso de armamento, sin previa orden del comandante de pelotón y escuadra.
- Deberes de precaución, prefiriendo hacer disparos al aire, antes que cometer errores contra la vida de los compañeros.
- Deberes de observancia del principio de precaución, prefiriendo que se escape un delincuente, antes que la acción militar pueda implicar actos contra la vida de civiles inocentes.

En similar sentido el referido Comandante remitió al Juez del proceso, el Boletín sobre las reglas de combate que deben acatar sus unidades militares, en el que quedan consignados los anteriores deberes, además de otros que se sintetizan así

- Deber de observancia del principio de precaución, identificando plenamente su objetivo, antes de disparar
- Deber de abstenerse de disparar et arma de dotación, si no existe certeza de que no hay población civil en área.
- Solamente el comandante puede ordenar abrir fuego
- Antes de emplear las armas los militares deben lanzar a viva voz su proclama de identificación.
- Solo se debe usar la fuerza necesaria para proteger vidas humanas y cumplir la misión asignada
- Todo retén militar debe estar identificado.
- Se debe usar la fuerza primero, únicamente ante indicios claros de intenciones hostiles
- Es preferible la huida de un delincuente a la muerte de personas inocentes

Caso del Señor ALEJANDRO URIBE.

En relación con la muerte del Señor ALEJANDRO URIBE, en hechos ocurridos el 26 de septiembre de 2006, en el sur del Departamento de Bolívar, la Fiscalía 18 Delegada de Derechos Humanos adelanta la pertinente investigación penal

Caso del Señor ARNULFO PABON

En relación con la muerte del Señor ARNULFO PABON JAIMES, en hechos ocurridos el 18 de agosto de 2006, el Juzgado 38 de Instrucción Penal Militar informó que adelantó que adelanto proceso penal con radicado No. 379, coma un Subteniente, un cabo segundo y cuadro soldados profesionales del Ejército.

De acuerdo con lo ilustrado en el proceso el 18 de agosto de 2006, e Ejército Nacional adscrito al Batallón de Artillería No. 2, al mando de un Subteniente, se

encontraba desarrollando una misión táctica en el área conocida como la Serranía San Lucas, del Departamento de Santander, cuando la tropa fue atacada, situación que obligó a los uniformados a responder a la agresión, suscitando así un enfrentamiento armado con personas que presuntamente eran integrantes del grupo armado ilegal Ejército de Liberación Nacional – ELN, que dejó como resultado la baja de un sujeto que posteriormente fue identificado como PABON JAIMES ARNULFO, conocido con el alias de “Lulo” y la captura de otra conocida como “Pico”, a quienes se les incautaron armas de corto alcance, munición para la misma y un radio.

De acuerdo con lo considerado por la autoridad en mención, la agresión recibida por los uniformados fue grave, injusta y sorpresiva, lo cual se corroboró con la versión sobre los hechos rendida por el sujeto capturado, quien era compañero del subversivo dado de baja, así como con los elementos encontrados en poder de estas personas

Bajo estas circunstancias, el 24 de mayo de 2007, el Juzgado de conocimiento del caso profirió acto de cesación de procedimiento a favor de los procesados, considerando que el personal militar inculcado se encontraba actuando de acuerdo con lo establecido en el artículo 34 numerales 1 y 4 del Código Penal Militar colombiano, por cuanto estos militares se vieron en la necesidad inevitable de actuar en legítima defensa de sus vidas, frente a la agresión real e inminente del occiso, respuesta respaldada en el estricto cumplimiento de un deber legal, consistente en la legítima labor de la tropa, que cumplía misiones del Servicio en el momento de los hechos.

La precitada decisión fue sometida a consulta ante el Tribunal Superior Militar, quien el 23 de agosto de 2007, acogió las anteriores consideraciones del Juzgado, confirmando así la decisión a favor de los investigados.

Colombia: Asesinato de Francisco Puerta

Violación alegada: Muertes a consecuencia de ataque o ejecuciones por fuerzas de seguridad o por grupos paramilitares.

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: Respuesta cooperativa pero incompleta

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia por la información que ha proporcionado relativa a la muerte de Francisco Puerta y a las medidas que tuvo para garantizar la seguridad de los miembros de la Comunidad de Paz de San José de Apartadó.

El Relator Especial lamenta que el Gobierno no proporcionó la información requerida sobre las ‘Águilas Negras’.

Llamamiento urgente del 23 de mayo de 2007 mandado con el Relator Especial sobre el derecho a la alimentación, el Relator Especial sobre la promoción del derecho

a la libertad de opinión y de expresión y Representante Especial del Secretario-General para los defensores de los derechos humanos

Quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación con el asesinato del Sr. Francisco Puerta, líder campesino y ex-coordinador de la Zona Humanitaria de la vereda Miramar y los miembros de la Comunidad de Paz de San José de Apartadó, en el Departamento de Antioquia.

De acuerdo con la información recibida:

El 14 de mayo de 2007, hacia las 07:00 de la mañana, el Sr. Puerta fue asesinado por dos individuos, con supuestos vínculos paramilitares, en una tienda frente del Terminal de Transportes de Apartadó. Los asesinos le habrían disparado varias veces. Los agresores habrían salido caminando tranquilamente a pesar de que hubiera una presencia policial en los alrededores.

Así mismo, el 9 de mayo de 2007, tres paramilitares, vestidos de civil y portando armas de fuego y radios de comunicación, habrían detenido a tres mujeres partidarias de la Comunidad de Paz de San José de Apartadó. Estos tres individuos se les habrían presentado como miembros de las ‘Águilas Negras’, y les dijeron que las buscaban, amenazando en matarlas. Los paramilitares llevaron a las mujeres hacia la salida de Apartadó en donde se ubica el retén de la policía, y las pidieron identificaciones y efectuaron llamadas por radio dando datos de cada una. Resultó que las mujeres no eran las que buscaban y las soltaron tras una media hora de detención, insultos y amenazas. Se alega que, antes de liberarlas, los paramilitares les habrían dicho que ‘ya tenían orden de meterse a San Josesito, la Unión y las demás veredas para realizar una masacre’ y que ‘la orden se había coordinado con la policía y el Ejército, quienes les habían dado los nombres de a quien tenían que “darle”’. Las mujeres fueron amenazadas con que algo les sucedería si dijeran algo sobre el incidente

Se teme que el asesinato del Sr. Puerta y las amenazas en contra de los miembros de la Comunidad de Paz de San José de Apartadó estén relacionados con sus respectivas actividades en defensa de los derechos humanos. Así mismo se expresa profunda preocupación por la seguridad e integridad física de los miembros de la mencionada comunidad.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de su Excelencia para que considere las normas fundamentales enunciadas en el artículo 6 del Pacto Internacional de Derechos Civiles y Políticos: “El derecho a la vida es inherente a la persona humana. Este derecho estará protegido por la ley. Nadie podrá ser privado de la vida arbitrariamente”. Deseamos también llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y en el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

El derecho a la vida y a que nadie sea privado arbitrariamente de la vida es aun más urgente cuando este derecho este en peligro por expresar liberadamente sus opiniones, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

Así mismo, deseamos llamar la atención del Gobierno de Su Excelencia para que considere las normas fundamentales enunciadas en la Declaración sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos, y en particular los artículos 1 y 2. Estos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales.

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

Quisiéramos instar a su Gobierno que adopte todas las medidas necesarias para proteger los derechos y las libertades de los miembros de la Comunidad de Paz de San José de Apartadó e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. En relación con el asesinato del Sr. Puerta, llamamos la atención sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989. En particular, los principios 9 y 19 establecen que los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para proteger los derechos de los miembros de la Comunidad de Paz de San José de Apartadó.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por la Comisión de Derechos Humanos y prorrogados por el Consejo de derechos

humanos, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, proporcione información sobre las actividades de las ‘Águilas Negras’, y indique si se ha emprendido acciones para esclarecer las alegaciones de colusión entre el mencionado grupo paramilitar y las fuerzas armadas en el Departamento de Antioquia.
3. Por favor proporcione información detallada sobre las acciones emprendidas por la policía en el caso descrito, las investigaciones iniciadas y las diligencias judiciales realizadas en relación con los casos. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor, indique si se han tomado medidas cautelares para garantizar la seguridad de los miembros de la Comunidad de Paz de San José de Apartadó.

Respuesta del Gobierno de Colombia del 17 de agosto de 2007

Por carta con fecha 14 de diciembre de 2007 el Gobierno transmitió la siguiente información en relación con el llamamiento urgente. La Fiscalía General de la Nación ha asignado al Fiscal Delegado ante los jueces del Circuito Especializado adscrito a la Unidad Nacional de Derechos Humanos, para adelantar hasta su culminación la investigación penal por el homicidio del Sr. Francisco Puerta. La Unidad de Apartado del cuerpo técnico de investigación –CTI, asumió la indagación, realizando de manera urgente una inspección técnica al cadáver, inspección al lugar de los hechos, orden de necropsia y entrevistas. La Procuraduría General de la Nación señaló que recurrió a las entidades competentes con el fin de desplegar todos los mecanismos necesarios para prevenir la ocurrencia de hechos similares en la región. Por su parte, el Grupo de Asesores Disciplinarios de la Procuraría General de la Nación asumirá conocimiento de un informe en el que se contextualizan los hechos que rodearon la muerte del señor Puertas, a partir de información recibida de parte de personas residentes del Corregimiento de San José de Apartado. Según información recibida por el Comando General de las Fuerzas Militares, se han implementado varias acciones para contrarrestar situaciones de riesgo en contra de miembros de la Comunidad de Paz. Tropas de Batallón de Infantería trabajan para garantizar las condiciones de seguridad necesarias en el área. Se señala que debido a estas medidas de seguridad, se han evitado acciones de grupos armados ilegales en contra de personas civiles permitiendo la movilización de los productos en la ruta que cubre Apartado - San José de Apartado. Las fuerzas militares señalan su disposición para escuchar a los representantes de la Comunidad de Paz para adoptar las medidas de protección que se deben adoptar para asegurar sus derechos. La Policía Nacional informó que se había impartido instrucciones a los Jefes Seccionales de policía Judicial y Seccional de Inteligencia, con el fin de desarrollar todas las labores de su competencia, para contrarrestar cualquier acción que intente vulnerar a los habitantes de la comunidad de paz de San José de Apartado. Se elaboró por parte del Comando del Departamento de Policía de Urabá la orden de servicios denominada “Medidas Preventivas para contrarrestar

Acciones de Grupos Delincuenciales Emergentes en San José de Apartado”, la cual establece dispositivos especiales en el Distrito Uno de Apartado, y la jurisdicción que se extiende hasta el corregimiento de San José de Apartado con el fin de preservar la seguridad ciudadana y contrarrestar acciones terroristas y delincuencias por los grupos armados emergentes. Así mismo se realicen coordinaciones de seguridad, aunadas entre la Policía nacional y el Ejército Nacional.

La Seccional de Inteligencia no cuenta con elementos de información que indiquen la presencia de grupos ilegales de autodefensa en el área general de San José de Apartado, conociéndose únicamente la presencia de los frentes 5 y 58 del grupo guerrillero de las FARC. El Departamento de Policía de Urabá permanentemente dispone la recolección de información así como la alerta permanente, disposición de los uniformados y el incremento de las campañas comunitarias en la jurisdicción con el fin de mejorar el acercamiento y la confianza de la población civil en la Policía Nacional.

Asimismo se ha realizado coordinaciones con la Alcaldía Municipal, a fin de expedir los actos administrativos necesarios que apoyen la labor policial, para garantizar el orden y la tranquilidad de la localidad de San José de Apartado. Se ha activado planes de búsqueda de información y se activaron y alertaron los frentes de seguridad de los sectores de la salida de Apartado hacia San José de Apartado, con el fin de que se informe cualquier actividad sospechosa o acción por parte de los integrantes de grupos ilegales. El Gobierno precisó que las diferentes Fuerzas que componen la Fuerza Pública del orden nacional, actúan coordinadamente, con una política pública vigente no tolerante con los grupos armados ilegales, por lo cual se ha acudido a la continua divulgación del respeto por los Derechos Humanos de la población y de la comunidad de Paz.

Colombia: Asesinato de Dairo Torres Sepúlveda

Violación alegada: Muertes a consecuencia de ataque o ejecuciones por fuerzas de seguridad o por grupos paramilitares.

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: Respuesta cooperativa pero incompleta

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia por la información que ha proporcionado relativa a la muerte de Dairo Torres Sepúlveda, pero lamenta que no recibió información sobre investigaciones en relación con el caso.

Carta de alegación del 27 de Julio de 2007 mandado con el Representante Especial del Secretario General para los Defensores de Derechos Humanos

Quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con Dairo Torres Sepúlveda, líder campesino de la Comunidad de Paz de San José de Apartado y coordinador de la Zona Humanitaria de Alto Bonito desde el año 2004.

De acuerdo con la información recibida:

El 13 de julio del 2007, hacia las 12.00, en la carretera entre Apartado y San José, Dairo Torres Sepúlveda fue asesinado por dos paramilitares reconocidos. Fue interceptado el vehículo de servicio público en que viajaba el Sr. Torres Sepúlveda. Los dos paramilitares pararon el vehículo y con armas cortas le dijeron al Sr. Torres Sepúlveda que bajara del vehículo y que el chofer del vehículo siguiera. Luego le asesinaron.

El asesinato ocurrió muy cerca del retén de policía pero no había presencia policial en los alrededores. Según se informa, ese mismo día el 13 de julio del 2007 hacia las 09:10, se habrían visto los dos paramilitares sentados y conversando con la policía en el retén en el Mangolo. Además el día anterior, el 12 de julio del 2007, se habrían visto los dos paramilitares, supuestamente miembros de las “Águilas Negras” en la localidad del asesinato amenazando a la comunidad.

Se teme que el asesinato del Sr. Dairo Torres Sepúlveda está relacionado con su trabajo en defensa de los derechos humanos en la Comunidad de Paz de San José de Apartadó. Así mismo se expresa profunda preocupación por la seguridad e integridad física del resto de los miembros de la mencionada comunidad.

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

Además, quisiéramos referirnos a los artículos siguientes:

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

grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

En caso de que sus investigaciones apoyen o sugieren la exactitud de las alegaciones mencionadas más arriba, quisiéramos instar a su Gobierno que adopte todas las medidas necesarias para investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

Es nuestra responsabilidad de acuerdo con los mandatos que nos ha entregado la Comisión de Derechos Humanos y prorrogados por el Consejo de los derechos humanos, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor proporcione información detallada sobre las investigaciones iniciadas y las diligencias judiciales realizadas en relación con el caso. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
3. Por favor, indique si se han tomado medidas cautelares para garantizar la seguridad de los miembros de la Comunidad de Paz de San José de Apartadó.

Respuesta del gobierno de Colombia del 30 de agosto de 2007

Por carta con fecha 30 de agosto de 2007 el Gobierno de Colombia transmitió la siguiente información en relación con el llamamiento urgente. El Gobierno informó que se han adelantado varias entrevistas con las hermanas del Sr. Torres y se habría conocido que el Sr. Torres pertenecía a la Comunidad de Paz de San José de Apartado, de donde salió hace un año, debido a que la Comunidad no le permitía el consumo de licor. Las hermanas del Sr. Torres desconocían si lo estaban amenazando y otra persona entrevistada señaló que la víctima venía bajando de la Vereda Caracoli, cuando fue investido por unos hombres que le dispararon y huyeron, sin precisar el número de victimarios o la persona que le habría suministrado esta información.

Colombia: Amenazas de Muerte contra José Domingo Flores

Violación alegada: Amenazas de muerte

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia por la información que ha proporcionado relativa a las medidas de protección para José Domingo Flores y las investigaciones relativas a las amenazas de muerte.

Carta de alegación del 22 de febrero de 2008 mandado con el Representante Especial del Secretario General para los Defensores de Derechos Humanos

Quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con el Sr José Domingo Flores, trabajador de la embotelladora de Coca Cola y dirigente del Sindicato Nacional de Trabajadores de las Industrias de los Alimentos (SINALTRAINAL), en la ciudad de Bucaramanga, y los Sres Luis Javier Correa Suárez y Luis Eduardo García, Presidente Nacional y dirigente respectivamente, del mismo sindicato. Los Sres José Domingo Flores y Luis Javier Correa Suárez fueron objeto de un llamamiento urgente emitido por la Representante Especial del Secretario-General para los defensores de los derechos humanos el 11 de octubre de 2007, y los Sres Luis Javier Correa Suárez y Luis Eduardo García, de un llamamiento urgente emitido por la Representante el 22 de octubre de 2007.

Según la información recibida:

El día 12 de febrero de 2008, se habría encontrado un sobre en el domicilio del Sr José Domingo Flores que contenía un comunicado firmado por el grupo paramilitar denominado 'Frente Aguilas Negras' amenazando a los tres susodichos. El comunicado de amenaza habría advertido a los tres que, a causa de su negativa a salir del departamento de Santander como se les habría ordenado en comunicados anteriores, las consecuencias serían 'muy inhumanas'. La carta comunicó que el citado grupo paramilitar iba a atentar contra los familiares de los susodichos y les amenazaba de muerte.'

El 14 de febrero de 2008, habría sido encontrado otro comunicado de amenazas en contra del Sr. José Domingo Flores, advirtiéndolo que ahora procederían contra su familia, que se llevarían a su hija del colegio y que debía abandonar y entregar su casa. Según las informaciones, estos hechos habrían ocurrido a la vez que las embotelladoras de Coca Cola habrían definido no pagar las prestaciones sociales a los trabajadores.

Se expresa preocupación que estas amenazas podrían estar directamente relacionadas con las actividades de los Sres José Domingo Flores, Luis Javier Correa Suárez y Luis Eduardo García en defensa de los derechos humanos, en particular de los derechos laborales. Asimismo, se expresa profunda preocupación por la integridad física y mental de los susodichos y sus familiares.

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

Asimismo, quisiéramos llamar la atención del Gobierno de su Excelencia sobre las siguientes normas y principios que son particularmente significativos con respecto a las denuncias mencionadas precedentemente:

- Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, los principios 4 y 9 a 19 obligan a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte. Los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones.

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

Además, quisiéramos referirnos al artículo 12, párrafos 2 y 3, que estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración.

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

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

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas por las víctimas?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor, proporcione información detallada sobre las diligencias practicadas. ¿Han sido adoptadas sanciones contra los presuntos culpables?
5. Por favor, proporcione información acerca de las medidas de protección implementadas a fin de asegurar la integridad física y psicológica de las personas mencionadas.

Respuesta del Gobierno de Colombia del 4 de abril de 2008

El Programa de Protección de Derechos Humanos del Ministerio del Interior y de Justicia comunicó que, teniendo en cuenta lo dispuesto por el Comité de Reglamentación y Evaluación de Riesgos - CRER en sesión del 1 de octubre de 2007, se adoptaron las siguientes medidas protectivas a favor de los dirigentes de la organización sindical SINALTRAINAL, Seccional Bucaramanga, Departamento de Santander:

- Un apoyo de transporte terrestre de 150 horas mensuales durante cuatro meses para el señor LUIS JAVIER CORREA SUAREZ, Presidente Nacional de SINALTRAINAL.
- Un apoyo de transporte terrestre colectivo por 120 horas mensuales, durante 6 meses para JOSE DOMINGO FLOREZ, LUIS EDUARDO GARCIA y otros dirigentes de la SINALTRAINAL, Seccional Bucaramanga
- La reevaluación del nivel de riesgo de estas personas, teniendo en cuenta que el último concepto había sido ponderado como "Ordinario" por el Departamento Administrativo de Seguridad –DAS

La precitada autoridad resaltó que todos los miembros de la Junta Directiva de SINALTRAINAL, Seccional Bucaramanga, cuentan con un medio de comunicación celular como medida de protección, para informar de manera inmediata a las instituciones pertinentes cualquier emergencia que se presente y que eventualmente pueda afectar la seguridad de los dirigentes sindicales en mención.

Por otra parte, la Policía Nacional en el Departamento de Santander implementó las siguientes medidas protectivas en la precitada zona:

- Realización de revistas policiales permanentes por parte de los Comandantes de las Estaciones de Policía de las ciudades de Bucaramanga y Floridablanca, en los lugares de residencia de los dirigentes sindicales en mención, a quienes se les brindaron los teléfonos de la Dirección de Derechos Humanos, et Grupo de Acción

Unificada para la Libertad - GAULA, y el Sistema Integral de Seguridad del Departamento de Policía de Santander.

- Realización de revistas policiales a la sede donde se encuentran las oficinas de SINALTRAINAL.

Por su parte, la Fiscalía General de la Nación informó que la Fiscalía 5 de Estructura de Apoyo de Bucaramanga, Santander, adelanta investigación penal en etapa de indagación, por varias presuntas amenazas de que habrían sido víctimas los señores LUIS EDUARDO GARCIA, LUIS JAVIER CORREA SUAREZ, y JOSE DOMINGO FLORES, en diferentes fechas de 2007, hechos transmitidos por la Representante Especial del Secretario General para los Defensores de Derechos Humanos, en las comunicaciones UA G/SO 214 (107-6) COL 3012007 de 11 de octubre de 2007, UA G/SO 214 (107-6) COL 31/2007 de 24 de octubre de 2007, referidas en la comunicación de Su Señoría.

En relación con los hechos específicos conjuntamente transmitidos por Su Señoría y la precitada Relatora, en la Comunicación UA GISO 214 (107-6) GISO 214 (33-24) COL4/2008 de 26 de febrero de 2008, relacionados con las presuntas amenazas de que habría sido víctima el señor JOSE DOMINGO FLORES en febrero de 2008, esta Dirección solicitó a las autoridades competentes información concerniente sobre el particular, dentro de la investigación penal adelantada por la mencionada Fiscalía Seccional.

El Gobierno de Colombia seguirá atento al resultado de las investigaciones que se adelantan, respecto de lo cual informará oportunamente a Su Señoría

Democratic People's Republic of Korea: Death Sentence of Two Soldiers of the DPRK

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males (soldiers)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Democratic People's Republic of Korea has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 19 February 2007

I would like to draw the attention of your Government to information I have received regarding **two soldiers** (names unknown) **of the Democratic People's Republic of Korea** ("DPRK") who are reportedly at risk of imminent execution. It is my understanding that the two, an Officer and a Sergeant, were the Commander and Vice Commander of a border post near the town of Hoeryong in North Hamgyong

province. They were reportedly arrested following a Government investigation into the flow of citizens of DPRK into the People's Republic of China, tried and sentenced to death for assisting citizens of DPRK to make unauthorized visits to the latter country.

While I do not wish to prejudge the accuracy of these allegations, I would like to respectfully remind your Excellency that States have the legal duty to ensure and respect the right to life and that this right shall be protected by law. Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. The Commission on Human Rights has consistently requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment. Those standards include, in particular, the following:

1) the "sentence of death may be imposed only for the most serious crimes" (Article 6(2) ICCPR), it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences (Paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984). Under international human rights law the crimes for which these two individuals were convicted cannot be considered among the "most serious crimes" for which the death penalty may be imposed. Furthermore, were the death sentences to be carried out in these cases, this would be on the basis of a law itself in violation of article 12(2) ICCPR which provides the right of anyone to leave his or her country.

2) "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10); these guarantees include the right to have access to a defense counsel of one's own choosing, or if the person does not have legal assistance to have a defense counsel assigned to him, and the right to be tried publicly.

3) "anyone sentenced to death shall have the right to seek pardon or commutation of the sentence." (Article 6(4) ICCPR).

In addition, transparency is one of the fundamental due process safeguards contributing towards efforts to prevent the arbitrary deprivation of life (see my recent report Transparency and the Imposition of the Death Penalty, E/CN.4/2006/53/Add.3).

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

(a) Are the above alleged facts accurate?

(b) For which offences does the law currently provide for the imposition of the death penalty?

(c) Which courts can impose the death sentence? What appeals and extraordinary remedies are available to a person sentenced to death?

(d) Please provide a complete list of the persons currently in detention under a death sentence, with the dates of their sentence, the offences of which they were found guilty, and the remedies exhausted by them as well as those still available to them.

Ecuador: Muerte de Fernando Sierra Cruz en la Provincia de Sucumbios

Violación alegada: Muerte a consecuencia de uso excesivo de la fuerza por fuerzas de seguridad

Persona objeto del llamamiento: 1 hombre (menor, refugiado)

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Ecuador por la información que ha proporcionado relativa a la muerte de Fernando Sierra Cruz. El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

Carta de alegación del 3 de julio de 2006

Quisiera señalar a la atención urgente de su Gobierno la información que he recibido en relación al supuesto excesivo uso de la fuerza por parte de miembros de la policía en contra de Fernando Sierra Cruz, un refugiado de 16 años de edad de origen colombiano y habitante de la parroquia de General Farfán en la provincia de Sucumbíos, región fronteriza con Colombia, en Ecuador.

De acuerdo con las informaciones recibidas:

El sábado 10 de junio de 2006 se desplegó un operativo policial en la Parroquia conocida con el nombre de General Farfán, luego que, aproximadamente a las ocho y media de la noche, dos policías, Luis David Lora Alvarez y Carlos Alejandro Garan Mina, fueran acribillados en el interior de su patrullero por individuos no identificados, en el mencionado lugar.

Los informes indican que pocos minutos después del ataque armado contra los dos policías, se activaron las alarmas locales de prevención instaladas en el pueblo. Sin embargo, ningún miembro de la policía se hizo presente en los siguientes noventa minutos, por lo que la propia población civil intentó dar los primeros auxilios a los gendarmes, con resultados infructuosos.

Posteriormente, hacia las diez de la noche, llegaron a General Farfán miembros de la Policía Nacional, acantonada en la capital provincial de Lago Agrio, con la intención de dar con el paradero de los asesinos de sus dos compañeros. Según las denuncias, los policías se comportaron de manera poco profesional, con actitudes violentas y bruscas contra la población civil, realizaron allanamientos a varias casas, y procedieron a detener a numerosas personas.

Se informa que fue detenido el ciudadano colombiano Fernando Sierra Rojas, quien reside en Ecuador junto con su familia, con estatus de Refugiado reconocido por el Estado Ecuatoriano y bajo el amparo del ACNUR. En el momento de la detención de su padre, su hijo, el joven Fernando Sierra Cruz, de 16 años de edad, también refugiado colombiano, intervino a favor de su padre pidiendo que no lo maltrataran físicamente, ante lo cual los policías amenazaron con detenerlo. En medio de la confusión y pánico, el joven Sierra Cruz salió corriendo y los miembros de la Policía Nacional lo acribillaron a balazos.

Sin implicar de antemano, una conclusión sobre los hechos, deseo llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en el Pacto Internacional de Derechos Civiles y Políticos. El artículo 6 de este instrumento garantiza a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

Quisiera instar a su Gobierno que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas de conformidad con los principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias, o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

Es mi responsabilidad de acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos y reforzado por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos llevados a mi atención. En mi deber de informar sobre esos casos al Consejo de Derechos Humanos, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique los familiares de Fernando Sierra Cruz obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del gobierno de Ecuador del 2 de abril de 2007

CUESTIONARIO SOBRE FERNANDO SIERRA CRUZ

1. SON EXACTOS LOS HECHOS A LOS QUE SE REFIEREN LAS ALEGACIONES?

Debido a que los hechos referidos en la comunicación suscrita por el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, Sr. Philip Alston, están en proceso de investigación aún no se puede confirmar si son exactos o no. Sin embargo para aclarar la relación circunstancial de los hechos, se adjunta informe investigativo No. 2006-063-UPAI-CP-21, realizado por el Teniente Bladimir Campaña Salgado y emitido el 25 de agosto de 2006.

2. FUE PRESENTADA ALGUNA QUEJA?

El padre de la víctima, Sr. Fernando Sierra Rojas, patrocinado por el Ab. Robert Intriago, acudió al Ministerio Fiscal el 14 de junio de 2006, para solicitar que se practiquen los actos de exhumación del cadáver de su hijo Fernando Sierra Cruz, el mismo que había sido enterrado en el cementerio de la Parroquia General Farfán, petición que fue aceptada, dentro de la etapa de indagación previa iniciada de oficio por el Agente Fiscal de Sucumbios, Dr. Mario Martínez Fuertes.

El 28 de junio de 2006, el Sr. Juan Gonzaga, Secretario de la Defensoría del Pueblo, remitió a la Policía Nacional, dos quejas sobre este hecho, signadas con el número 085-2006.

El 13 de junio de 2006, mediante Oficio No. 095-APDH-2006, el Sr. Mauricio Gallardo Guillén, Coordinador del Programa de Fronteras APDH del Ecuador, presentó una solicitud de información sobre el mismo hecho.²⁸

3. POR FAVOR, PROPORCIONE INFORMACIÓN DETALLADA SOBRE LAS INVESTIGACIONES INICIADAS EN RELACION CON EL CASO, INCLUYENDO LOS RESULTADOS DE LOS EXAMENES MEDICOS LLEVADOS A CABO. SI ESTAS NO TUVIERON LUGAR O NO FUERON CONCLUIDAS, LE ROGAMOS EXPLIQUE POR QUE.

La causa penal por el presunto homicidio del menor de edad, Fernando Sierra Cruz, signada con el número 038-2006, por razones de fuero, se sigue en el Juzgado

²⁸ Información que consta en el informe investigativo No. 2006-063-UPAI-CP-21, realizado por el Teniente Bladimir Campaña Salgado y emitido el 25 de agosto de 2006, remitido al Ministerio de Relaciones Exteriores, mediante oficio No. 2006-3842-J2-PD-PN, el 21 de diciembre de 2006.

Segundo del Primer Distrito de la Policía Nacional, en contra de los sindicatos: Luis Edison Romero Pulido, Oscar Mauricio Torres Cevallos y Carlos Bolivar Palacio Rojas, todos miembros de la Institución Policial.

Sobre dicha causa se ha presentado un exhaustivo informe investigativo realizado por la Policía Nacional que conjuntamente con las diligencias practicadas en la etapa de Indagación Previa, por el Ministerio Fiscal, han llevado a que la Juez Segunda del Primer Distrito de la Policía Nacional, dicte autocabeza de proceso, pues sobre la base de la investigación, la Juez concluye que los hechos denunciados constituyen acción punible y pesquisable de oficio, y por lo tanto, se ha mandado instruir Sumario de Ley en contra de los mencionados sindicatos. Además se han mandado practicar algunas diligencias para la organización del Sumario, algunas de las cuales ya se han cumplido.

La Corte Nacional de Justicia Policial, se ha comprometido, mediante Oficio No. 001.2007.CNJP, a velar por que los principios de celeridad, eficiencia y una administración de justicia independiente e imparcial, se apliquen en el desarrollo de esta causa penal, hasta su respetiva resolución, ajustados a las normas del debido proceso y en cumplimiento irrestricto de las garantías constitucionales.²⁹

Con relación a los exámenes médicos practicadas, el Ministerio Fiscal ha informado que la autopsia de quien en vida fue Fernando Sierra Cruz, se practicó en presencia de los peritos, médicos legistas, Dr. Fernando Salazar y Dr. Carlos Córtez, los mismos que presentaron el informe que adjuntamos al presente. Dichos médicos entregaron adicionalmente el proyectil de bala extraído del cadáver del menor Sierra, el mismo que se depositó en la Policia Judicial de Sucumbíos para las investigaciones del caso.³⁰

4. POR FAVOR, PROPORCIONE INFORMACIÓN DETALLADA SOBRE LAS DILIGENCIAS JUDICIALES Y ADMINISTRATIVAS PRACTICADAS. HAN SIDO ADOPTADAS SANCIONES DE CARÀCTER PENAL O DISCIPLINARIO CONTRA LOS PRESUNTOS CULPABLES?

Las diligencias ordenadas y practicadas por parte del Ministerio Fiscal, a partir del 12 de junio de 2006 son entre otras:

- a. Versión libre y voluntaria Fernando Sierra Rojas
- b. Identificación del cadáver y reconocimiento exterior del menor Fernando Sierra Cruz, diligencia que se llevó a cabo en presencia del Cónsul de Colombia en Nueva Loja.
- c. Solicitud de información a Comandante Provincial de Sucumbfos sobre las clases y policías que estuvieron en el operativo el día 10 de junio de 2006, en la parroquia General Farfán.

²⁹ Esta información, ha sido proporcionada por et Comandante General de Policia, José Julio Rivera Montero, mediante oficio No. 001.2007.CNJP, al que adjunta una copia de todo lo actuado

³⁰ Oficio No. 9583 de 12 de diciembre de 2006, suscrito por la Dra. Cecilia Armas, Ministra Fiscal General

d. Exhumación de cadáver y autopsia de quien en vida fue el menor de edad Fernando Sierra Cruz.

Posteriormente y en vista de que la Jueza Segunda del Primer Distrito de la Policía Nacional, mediante oficio No. 2006-3146-J2-PD-PN, solicitó al Agente Fiscal, se inhiba de seguir tramitando la indagación previa en razón del fuero policial, el Agente Fiscal, remitió los originales de todo lo actuado a la mencionada Jueza, el 30 de octubre de 2006.³¹

Por otro lado, en el informe investigativo policial No. 2006-063-UPAI-CP-21, realizado por el Teniente Bladimir Campaña Salgado y emitido el 25 de agosto de 2006, que se adjunta al presente, constan las diligencias practicadas previamente a su realización.

En el autocabeza de procesos dentro de esta causa penal, se ordenó la práctica de entre otras, las siguientes diligencias, que en su mayoría están ejecutadas:

a. Declaración Indagatoria de los señores Luis Edison Romero Pulido, Oscar Mauricio Torres Cevallos y Carlos Bolivar Palacio Rojas, miembros de la Institución Policial.

b. Declaración sin Juramento de los señores Subtenientes de Policía: Francisco Rolando Barrionuevo Caicedo y Cristian Andrés Pérez Duque, Cabos Primeros de Policía Victor Manuel López Tangoy, José Manuel Tituana Yugcha y Juan Carlos Pilatasig Chucuri, Cabos de Policía José Patricio Freire Mufioz, Policías Nacionales: Fernando David Carapaz Chiciza, Luis Guillermo German Analuisa, Fabricio Esteban Anangono Padilla, Pablo Fernando Chuquin Ponce, Dario Fernando Garcia Bone, José Vicente Angulo Vargas, José Vicente Remache Galarza, Edgar Raúl Gaibor Camacho, Bolivar Octaviano Montenegro Enriquez, Mauro Iván Garcés Silva, Milton Roberto Arias Garcia, Fabricio Lizandro Villegas Noboa, Freddy Alcides Naranjo Fernández, Lenin Esman Zambrano Zambrano, Cristian Hernán Rubio Puglla, Juan Carlos Puma González, Mario Wilson Shucadd Agualsaca, Rolando Renato Yopez Endara, Segundo Medardo Agualongo Chacan, Victor Hugo Rubio Juma, Victor Ambal Aldas Arias, Manuel Enrique Cedefio Arauz, Segundo José Soto Avalo, Juan Eduardo López Sánchez, Nelson Patricio Guanin Tigse.

c. Declaración Instructiva del ciudadano colombiano Fernando Sierra Rojas.

d. Testimonios Propios de los señores Coronel de Policía Rómulo Montalvo de la Torre, Teniente de Policía Bladimir Campaña Salgado, Cabos segundos de policía Marcos Sánchez Macias, Marco Eduardo Benegas Travez y Fernando Hilario Castro Bueno, Edison Rodrigo Reiban Astudillo, Policías Nacionales Iván Mauricio Alcivar Corro y José Godoy, ciudadanos civiles Dr. Juan Cortez, Satin Lozada Valderrama, Maria Lucila Sierra Cruz, Nixon Zamora Becerra, Leila González, Humberto Lozada Valderrama Sonia Josefina López Obando.

e. Diligencia de reconocimiento del lugar de los hechos con la intervención de Peritos.

³¹ Idem

No se cuenta con información al respecto de las sanciones administrativas o disciplinarias que se hayan establecido en contra de los presuntos responsables.

5. POR FAVOR, INDIQUE SI LOS FAMILIARES DE FERNANDO SIERRA CRUZ OBTUVIERON ALGUN TIPO DE COMPENSACIÓN A MODO DE INDEMNIZACIÓN.

Los familiares de la víctima aún no han recibido ninguna indemnización pero esto no significa que no tengan derecho a ella pues el artículo 20 de la Constitución Política de la República, dispone que las instituciones del Estado, sus delegatarios y concesionarios, estarán obligados a indemnizar a los particulares por los perjuicios que les irroguen como consecuencia de la prestación deficiente de los servicios públicos o de los actos de sus funcionarios y empleados, en el desempeño de sus cargos. Las instituciones antes mencionadas tendrán derecho de repetición y hayan efectiva la responsabilidad de los funcionarios o empleados que, por dolo o culpa grave judicialmente declarada, hayan causado los perjuicios. La responsabilidad penal de tales funcionarios y empleados, será establecida por los jueces competentes.

La Ley Penal Policial no contempla reparaciones ni indemnizaciones por daños y perjuicios, sin embargo los familiares de la víctima pueden demandar dicha indemnización por la vía ordinaria, según lo dispuesto en el Libro Cuarto, del Código Civil ecuatoriano.

El artículo 69 del Código de Procedimiento Penal, establece como derechos del ofendido, et derecho a reclamar la indemnización civil, una vez ejecutoriada la sentencia condenatoria, conforme con las reglas de este Código, haya propuesto o no acusación particular.³²

Ecuador: Muerte de Paúl Alejandro Guanuña Sanguña

Violación alegada: Muerte a consecuencia de uso excesivo de la fuerza por fuerzas de seguridad

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Ecuador por la información que ha proporcionado relativa a la muerte de Paúl Alejandro Guanuña Sanguña. El Relator Especial preguntará que se le mantega informando del progreso del proceso iniciado contro los policias acusados del homicidio.

Carta de alegación del 31 de enero de 2007

³² Esta información ha sido proporcionada, vía telefónica, por la Dra. Lisbeth Pérez Riera, Jueza Segunda del Primer Distrito de la Policía Nacional.

Quisiéramos señalar a la atención urgente de su Gobierno la información que he recibido en relación con la muerte de **Paúl Alejandro Guanuña Sanguña** de 17 años de edad, por parte de miembros de la policía, en hechos ocurridos en la estación norte de la Ecovía, en Quito.

Según las informaciones recibidas:

El sábado 6 de enero de 2007, Paúl Alejandro Guanuña Sanguña y Cristian Avila de 16 años, se dirigían a pie hacia sus domicilios ubicados en Zámbez. Por el camino se encontraron con otro muchacho, Pedro Leines, cuya edad no ha sido precisada. En el camino Pedro Leines sacó un marcador y comenzó a rayar una pared en la calle de las Gardenias sector de El Inca al norte de la ciudad, escribiendo el nombre de su grupo de amigos "Los Mapa".

Según las informaciones recibidas, en ese momento apareció un vehículo patrullero. Paúl Alejandro Guanuña Sanguña y Pedro Leines salieron corriendo, mientras Cristian Avila fue detenido y puesto contra la pared para ser registrado por la policía. Fue conducido al vehículo patrullero en donde le golpearon en el rostro y le echaron gas mientras le interrogaban.

Ese mismo día hacia las 21h30, los mismos policías detuvieron al joven Paúl Alejandro Guanuña Sanguña en un callejón sin salida. Le obligaron a subir a su vehículo y dejaron a Cristian Avila en las calles de Zámbez mientras se fueron con Paul Alejandro Guanuña Sanguña hacia Quito. Al día siguiente, su cuerpo fue encontrado sin vida en el fondo de la quebrada de Zámbez, presentando, entre otras, lesiones a nivel de las manos, que se parecían a quemaduras hechas con cigarrillos.

De acuerdo con las informaciones, una ONG de derechos humanos presentó una denuncia contra la policía con el fin de que se investiguen los hechos y se sancione a los responsables. Por su parte, la familia de Paúl Alejandro Guanuña Sanguña presentó una denuncia ante el Ministerio Público, la cual está siendo llevada por el Dr. Patricio Navarrete, agente fiscal del Distrito de Pichincha, Unidad de delitos contra la vida, al cual se le ha solicitado que efectúe la exhumación del cadáver ya que el protocolo de autopsia no señala lesiones, contrariamente a lo observado por su familia.

En estas circunstancias, y sin implicar de antemano una conclusión sobre los hechos, hago un llamado al Gobierno de su Excelencia para que me proporcione información detallada sobre las medidas adoptadas para garantizar la investigación de las violaciones mencionadas en esta carta, así como el procesamiento y castigo de las personas responsables de dichas violaciones.

A este respecto, me gustaría llamar la atención de su Gobierno sobre artículo 2 del Pacto Internacional de Derechos Civiles y Políticos, que provee que los Estados partes deben "respetar y garantizar a todos los individuos que se encuentren en su territorio y estén sujetos a su jurisdicción los derechos reconocidos en el presente Pacto," incluyendo el derecho a la vida. Según esta obligación general, los Estados deben investigar, enjuiciar y castigar efectivamente cualquiera privación arbitraria de la vida. (Véase Comité de Derechos Humanos, *Arhuacos v. Colombia*, Comunicación 612/1995, § 8.8; Comité de Derechos Humanos, Observación General 31). También,

me gustaría llamar la atención de su Gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamo la atención sobre los principios 9 y 19 según los cuales, que explican detalladamente estos deberes.

De acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos, mandato reforzado por el Consejo de los derechos humanos, es mi responsabilidad intentar conseguir clarificación sobre los hechos llevados a mi atención. En mi deber de informar sobre esos casos al Consejo de Derechos Humanos, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos referidos?
2. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a la muerte de Paúl Alejandro Guanuña Sanguña. ¿Cual fue el resultado de la exhumación del cadáver del difunto?
3. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de Ecuador del 23 de abril de 2007

En documentación adjunta, el gobierno envía información adicional respecto al caso del señor Guanuña, en particular el protocolo de exhumación del cadáver de la víctima.

INFORMACIÓN COMPLEMENTARIA CUESTIONARIO CASO PAUL ALEJANDRO GUANUÑA SANGUÑA

1. Son exactos los hechos referidos?

El Estado ecuatoriano reitera que los hechos señalados por el Relator, se encuentran en investigación y no pueden considerarse exactos, ya que para llegar al esclarecimiento total del presunto delito denunciado, es necesario concluir con las investigaciones necesarias, las mismas que deben cumplirse en el tiempo establecido por la ley, durante la etapa de Instrucción Fiscal, que en este caso, se está ejecutando con agilidad y eficiencia, dentro del proceso No. 108-2007-MFDP-UDCV-MPNS.

2. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a la muerte de Paúl Alejandro Guanuña Sanguña. Cuál fue el resultado de la exhumación del cadáver del difunto?

Se remite en calidad de anexo, el Protocolo de Exhumación del cadáver de quien en vida fue Paúl Alejandro Guanua, diligencia practicada por los doctores Luis Cisneros Yépez y Sandra Andrade Granja, mediante Informe No. 02-DML-2007, se indica:

"Causa de muerte: HEMORRAGIA CEREBRAL, FRACTURA DE CRANEO, TRAUMA CRANEO ENCEFALICO, LACERACION PULMONAR DERECHA. Consecutiva a una probable precipitación."

3. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

Además de lo señalado en el informe preliminar, se ha practicado la pericia de reconstrucción de los hechos, ordenada por el Ministerio Público. Adicionalmente, se han practicado otras diligencias dentro del juicio de acusación particular, entre ellas, versiones de testigos, versiones de imputados y establecimiento de medidas precautelatorias en contra de los imputados, quienes continúan detenidos.

4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

El padre del menor de edad fallecido, Sr. Leonardo Guanuña Lema, ha presentado una acusación particular en contra de Geovanny Xavier Alvarez Zambrano, Eduardo Santiago Cruz Live y Claudio Ermel Chicaiza Caiza, la misma que está siendo tramitada por el Juez Primero de lo Penal de Pichincha. El acusador particular, ha solicitado el pago de daños y perjuicios, tomando en cuenta el daño psicomotriz tanto del acusador como de su familia y ha fijado la cuantía en quinientos mil dólares americanos.

Respuesta del Gobierno de Ecuador del 17 de diciembre de 2007

En esta ocasión el Estado ecuatoriano tiene a bien remitir copia certificada del auto del Juez competente por el cual se llama a juicio penal y se ratifica la prisión preventiva de los policías Geovanny Xavier Alvarez Zambrano, Eduardo Santiago Cruz Live y Claudio Ermel Chicaiza Caiza, acusados del homicidio del señor Paúl Alejandro Guanuña Sanguña. Como se podrá observar del auto anexo, se ha ordenado también el secuestro, retención o prohibición de enajenar de los bienes de los acusados.

Este documento es prueba fehaciente que el Ecuador respeta el debido proceso y que tanto la Fiscalía como el Juez competente de la causa han dado atención acuciosa a las diligencias penales y judiciales para esclarecer este homicidio, observándose para el efecto las normas penales tanto adjetivas como sustantivas así como las garantías constitucionales y procesales para el trámite criminal.

Egypt: Deaths in Custody of Muhammad Suleyman Youssef Ahmed and Ashraf Sa'id Youssef

Violation alleged: Deaths in custody

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 7 June 2007 sent with the Special Rapporteur on the question of torture

We would like to bring to your to your Government's attention information we have received concerning developments in the investigation of the deaths in custody of Messrs. Muhammad Suleyman Youssef Ahmed and Ashraf Sa'id Youssef, which occurred in April and May 2005 respectively.

According to the information we have received:

Mr. Ashraf Sa'id Youssef, aged 28, was arrested on 29 April 2005 in al-Manoufiya in connection with bombings in Cairo on 7 April 2005. He was reportedly held incommunicado for 13 days. His relatives learned about his whereabouts only when on 11 May 2005 he was transferred to al-Minyal University Hospital with serious injuries. He died eight days later, on 19 May 2005. On 21 May 2005, the competent Public Prosecutor stated that, according to initial police reports, Mr. Ashraf Sa'id Youssef had caused his own injuries by repeatedly banging his head against the wall of his cell. Your Excellency's Government is reported to have acknowledged, however, that Mr. Ashraf Sa'id Youssef was also bruised on his chest and arms. The Public Prosecutor reportedly announced that he had ordered the deceased's body to be made available for forensic examination to establish the cause of death. According to our information as of today, i.e. two years later, the results of this examination, as well as of any other inquiry into the circumstances of his death, remain unknown.

Mr. Muhammad Ahmed, a 40-year-old primary school teacher from Shubra al-Kheima, and a cousin of Mr. Ashraf Sa'id Youssef, was arrested on 29 April 2005 in connection with bombings in Cairo on 7 April 2005 as well. He reportedly died in custody on the same day. An official of the Ministry of Interior is reported to have stated, without further details, that Mr. Muhammad Ahmed had health problems that may have caused or contributed to his death. Relatives of the deceased are reported to have told the media that although they suspected that Muhammad Ahmed had died as a result of torture, they had been coerced by the authorities into signing a medical report that attributed the death to natural causes, and into burying the body the same day in the presence of police officers.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Government's attention to the fundamental principles applicable under international law to these cases. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life.

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

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

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

In the light of these norms and principles of international law we would like to seek information on the steps taken by your Excellency's Government in the two years since the death in custody of Messrs. Muhammad Suleyman Youssef Ahmed and Ashraf Sa'id Youssef. Should your inquiries confirm our information that the circumstances surrounding their death have not been investigated and clarified in a way that complies with your Government's above-described obligations, we would urge your Government to initiate or complete such investigations expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensating the victims' families. Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights, extended by the Human Rights Council, and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the custodial deaths of Messrs. Muhammad Suleyman Youssef Ahmed and Ashraf Sa'id Youssef. If no inquiries have taken place or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken against the officers allegedly responsible for the deaths of Messrs. Muhammad Suleyman Youssef Ahmed and Ashraf Sa'id Youssef. Have penal, disciplinary or administrative sanctions been imposed on them?
4. Please indicate whether compensation has been paid to the families of Messrs. Muhammad Suleyman Youssef Ahmed and Ashraf Sa'id Youssef.

Egypt: Death Sentences of Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 3 males

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Egypt regarding the cases of Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer. However, the SR remains concerned that they have been sentenced to death despite not being brought promptly before a judge and despite the apparent absence of a serious investigation into allegations that their confessions were extracted with torture.

Allegation letter dated 29 June 2007 sent with the Special Rapporteur on the question of torture and the Special Rapporteur on the independence of judges and lawyers.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the death sentences imposed against three men convicted on charges connected to the bomb attacks on the Sinai Peninsula in October 2004, Messrs. Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer.

According to the information we have received:

The three men were tried before the Emergency Supreme State Security Court (ESSSC) sitting in al-Islamiliya on charges arising from the bomb attacks

committed in Taba and Nuweiba on the Sinai Peninsula in October 2004, which killed 34 people and injured more than 100. In September 2006, the ESSSC announced the death sentences against Messrs. Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer, while other defendants were sentenced to long prison terms. The death sentences were then reportedly submitted to the office of the Mufti. On 30 November 2006, the ESSSC announced that the Mufti had approved the death sentences and that it now confirmed them. It is our understanding that there is no appeal against the sentences of the ESSSC, which can only be commuted by the President.

Reports indicate that Messrs. Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer had their first contact with their lawyers when the trial began, months after their arrest, and were only able to communicate with their lawyers during court hearings. The majority of the defendants denied the charges against them and claimed that they had confessed under torture. Upon request of the defence lawyers, the court ordered medical examination of the defendants. The medical exams, which were carried out several months after the alleged torture, did not confirm the allegations of the accused.

We have also been informed that the cases of Messrs. Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer were submitted to the African Commission on Human and Peoples' Rights, which has declared them admissible in May 2007. The African Commission has also issued provisional measures asking your Excellency's Government to defer the executions until it has decided the merits of the case. We have received reports, however, that your Government's delegation before the African Commission in May 2007 indicated that the legal adviser in the office of the President has advised to ratify the death sentences and that the President might ratify at any time.

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

We would in the first place respectfully remind your Excellency's Government that in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights, to which Egypt is a party, admits of no exception. Relevant to the case at hand, these guarantees include the right to "have adequate time and facilities for the preparation of [one's] defence and to communicate with counsel of [one's] own choosing", the right not to be compelled to confess guilt, and the right to appeal a conviction. We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

If it was confirmed that the three men sentenced to death were only able to speak to their lawyers when their trials began after several months of detention, this would negate the possibility of a fair trial. Moreover, while we do appreciate that the court ordered a medical examination of the defendants subsequent to the torture allegations being made in court, the delay with which they were carried out puts their value in question. Also in this respect, the alleged failure to provide the defendants with legal counsel from the time of their arrest, as required by Principle 5 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, undermines the fairness of the proceedings (Principle 5 reads: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”)

Moreover, a defendant facing serious charges in a complex case who could only communicate with his lawyer during court hearings cannot possibly be said to have enjoyed a fair trial.

To sum up, only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right.

In this connection, we would further like to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular:

- principle 5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

- principle 7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

Furthermore, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would also like to draw your Government’s attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the

prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We therefore urge your Excellency's Government to take all necessary measures to guarantee that Muhammed Gayiz Sabbah's, Usama 'Abd al-Ghani al-Nakhlawi's and Yunis Muhammed Abu Gareer Hossein's rights under international law are respected. One way in which this might be achieved is through suspension of the death sentence against them until the African Commission on Human and Peoples' Rights has expressed its opinion on the merits of their complaints.

It is our responsibility under the mandates provided to us by the Commission on Human Rights, reinforced by the appropriate resolutions of the General Assembly and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the above reports accurate, particularly regarding access to legal counsel? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details concerning the remedies against the execution of the death sentence still available to Muhammed Gayiz Sabbah's, Usama 'Abd al-Ghani al-Nakhlawi's and Yunis Muhammed Abu Gareer Hossein. Is it accurate that they do not have the right to appeal against judgment and sentence to a court of higher instance? What is the role of the Mufti in the process leading to the imposition of the death penalty?

Response from the Government of Egypt dated 11 July 2007

By letter dated 11/07/07, the Government informed that on 7/10/2004 the Taba Hilton Hotel and both Al-Badiya and Gozor Al-Kamar encampment resorts were blown up by car bombs. As a result of the three incidents, 34 persons were killed and 157 were injured. Pursuant to the provisions of the emergency law of the country, and based upon the findings of the security investigations which were sufficient to indicate the involvement of Mohamed Gayez Sabah, Ossama Abdel Ghany al-Nakhlawy, and Mohamed Yunis Elayyan Abu Gareer and others in the aforementioned incidents, the three suspects and other suspects were arrested. The three suspects together with the other suspects were referred to the Public Prosecution Office (PPO) for investigation. The PPO instigated the investigation. Suspect Mohamed Gayez Sabah was interrogated during four investigation sessions. Suspect Ossama Abdel Ghany al-Nakhlawy was interrogated during eight sessions. Mohamed Yunis Elayyan Abu Gareer was interrogated during 25 sessions. All the suspects confessed to the crimes they had committed. The three and others were referred to the court for committing the aforementioned crimes. Throughout all trial sessions, the court responded to all the requests of their defence. The court allowed the attorneys to visit them whenever a visit was requested. The court allowed the attorneys to obtain the certificates and affidavits they needed from different agencies, responded to the request of the defence to obtain photocopies of the investigation and trial minutes, took heed of the statements of all the witnesses of the defence and responded to the request of the three suspects to refer them to the Forensic Medicine

Authority. The court heard the pleadings of the suspects' defence throughout the 12 sessions. On 30 November 2006, the court issued by consensus the death sentences on the three suspects after it received the opinion of the Mufti of Egypt who confirmed that the death penalty concurs with Islamic Shari'a. According to the provisions of the Egyptian law, courts should seek the opinion of the Mufti on the issuance of death sentences in order to confirm how far the death penalty concurs with Islamic Shari'a. The Mufti's opinion in that regard is an advisory one. The court sentenced the lapse of claim on two persons who were dead, life imprisonment on one person, and 5 to 10 years' imprisonment on the other suspects. After the judgment was issued, the three convicts brought two grievances to the Judgments Ratification Office in which they repeated the same pleas that were previously presented to the court. The Counsellor (Judge in High Court appointed by the Supreme Judicial Council) who examined the judgment studied the grievances of the convicts and concluded in his memorandum that: the judgment satisfied all the legal elements according to Egyptian law; the judgment took into consideration evidence upon which the court established the validity of the claim against the accused persons through their statements, testimonies of witnesses, the police investigations and the forensic medicine and criminal laboratory reports; the judgment encompassed the incident appropriately according to the affirmed facts, encompassed all the pleadings and pleas of the defence as contained in the two grievances of the convicts, and responded to them sufficiently without prejudice to the right of the defence; in its response on the "invalidity of the complementary referral order," the judgment noted that the PPO is not allowed to investigate the same incident with the same accused person after the case is referred to the court, however, this restriction does not jeopardize the prosecution's right to investigate another person accused of the same incident but who has not been referred to the court, which is what the Court of Cassation concluded in its judgment; and the protested judgment is concurrent with the law, and none of the convicts forwarded whatever may affect its validity. On the basis of the above, the examining Counsellor issued a memorandum supporting the conclusions reached in the judgment of the State Security Emergency Court, hence the President ratified this judgment. Therefore, there remains for the convicts to petition the President to use his constitutional competence of granting pardon. The Government informed that in the PPO's investigation minutes the lawyers attended the investigation sessions with the suspects. The lawyers were allowed to present their pleadings and affirm their requests in the sessions. The PPO did not refuse any request from the lawyers to appear with their clients. It is worthy to note that the law applicable at the time of investigation did not stipulate that the PPO has to delegate a lawyer to attend the investigation process, but it was mandatory to delegate a lawyer if the case is referred to the court. However, during the past term of the People's Assembly, Article 124 of the Criminal Procedure Law was amended within comprehensive amendment on procedures, controls and rules of preventive detention by virtue of the Law No. 145/2006 which made the appearance of the lawyer with the defendant mandatory before the beginning of interrogation in felonies. The PPO has become obliged to delegate a lawyer for the suspect who does not have a lawyer. It is affirmed in the minutes of the court sessions that the court responded to all the requests of the lawyers to visit the accused whenever a visit was requested and that the court responded as well to their request to obtain photocopies of the investigation and trial sessions. The relatives of the suspects were allowed to visit them: the relatives of Ossama Mohammed al-Nakhlawy visited him 17 times, the relatives of Mohamed Gayez Sabah visited him 30 times, and the relatives of Yunis Mohamed

Abu Gareer visited him 16 times until April 2007. Regarding the allegation that the three were subjected to torture, Article 42 of the Constitution provides that “Any citizen arrested, detained or whose freedom is restricted shall be treated in a manner concomitant with the preservation of his dignity. No physical or moral harm is to be inflicted upon him. He may not be detained or imprisoned except in places defined by laws organizing prisons. If a confession is proved to have been made by a person under any of the aforementioned forms of duress or coercion, it shall be considered invalid and futile.” And Article 57 provides that “Any assault on individual freedom or on the inviolability of the private life of citizens and any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription. The State shall grant a fair compensation to the victim of such an assault.” The Egyptian penal code criminalizes committing and ordering acts of torture in articles 126 and 282; and criminalizes unjustified detainment and penalties exceeding those decided by articles 127 and 280. In compliance with the constitutional provisions and with article 57 of the Constitution, criminal procedure law stipulates in its article 15 that the aforementioned crimes may not lapse by prescription. Article 203 of the same law stipulates that the court shall not rely on any confession made by a person under any form of duress or coercion. The preceding is in full harmony with the African Charter on Human and People’s Rights and the Convention against Torture, and is confirmed by the precedents and the legal sentences by the Egyptian judiciary. Furthermore pursuant to the judicial principles on the scope of criminal liability, the assessment of the value of confession as an evidence is subject to the principle of “judicial discretion”. Consequently, the adoption of a confession is subject to the discretion of the judge. The judge decides whether he is convinced with the confession as a reliable evidence for conviction, or to disregard it if there is a legal justification. The judge’s competence to assess the value of a confession entails as well his competence to interpret it, define its significance and explore its motives. This principle applies whether the confession was judicial or non-judicial, whether it took place in the process of factual investigation, interrogation or even before a normal person. The judge does not rely on a confession if he is not convinced with it even in the case of the accused person insists on his confession. In such a case the judge may issue an acquittal and clarify in the causation why he did not take the confession into consideration. If it is proved that the confession was made under duress or coercion, it should be considered as invalid. But this does not prevent the court from taking other evidence to prove the accusation. In this respect, it is worthy to mention that the court judgment against the suspects took into consideration all the circumstances related to the facts according to the satisfaction of the court based upon the papers of the case, the investigations, the court sessions and the related hearings of witnesses and the written and verbal pleadings of the defence in order to clarify the facts, the elements of the crime and the provisions of the law applicable thereon. The courts considered, scrutinized and analyzed all the evidence of the crime including the related medical and technical reports and the public prosecution investigations to reach the facts upon which its judgment was established. The court responded to all the pleas of the defence during the trial including the plea of the invalidity of the confessions because they were made under physical and moral duress. However, the court was satisfied that the confessions of the suspects and the other accused persons during the investigations were made by persons who have the will and the discernment and are fully aware of the charges against them. Moreover, it was found when the accused persons appeared for the first time before the public prosecutor that

they were free from any injuries. The court was certain that the suspects were fully aware that the investigations were made by the PPO and that it had informed them with the charges against them; and the court was convinced that their confessions were valid. The PPO investigation scripts affirmed that the Prosecutor viewed the suspects and remarked that they were free from apparent injuries. The pleadings concerned with torture were forwarded to the court. The court responded to the lawyers' request to refer the suspects to forensic medicine as mentioned in the causes of the judgment. The court had no suspicions about the suspects' confessions before the PPO throughout the numerous investigation sessions. Moreover, the suspects brought complaints to the Judgments Confirmation Office. The documents indicate quite evidently that the right to litigation was not violated. The suspects had a fair and just trial before a legal national and competent court. The trial sessions were public and were attended by the lawyers who represented the respondents; and the trial was concluded in a reasonable period. Hence this negates the occurrence of any violation by the trial of article 14 of the ICCPR. For all the above reasons, the allegations that the rights of the three suspects were violated are incorrect and groundless.

Ethiopia: Accountability for Deaths of Demonstrators in June and November 2005

Violation alleged: Deaths due to use of force by law enforcement officials; Impunity

Subject(s) of appeal: 193 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 29 January 2007

I would like to follow up to a letter I wrote to your Excellency's Government on 10 June 2005 together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the question of torture. In that letter we expressed our concern with regard to reports regarding the reaction by Government forces to demonstrations in Addis Ababa, mainly from 6 to 8 June 2005, including allegations of the arrest and incommunicado detention of approximately 1500 students and other demonstrators, as well as the killing of 26 persons and the wounding of 100 others by the security forces. We sought from your Government information about the accuracy of the reports received and about the results of any investigations, judicial or other inquiries carried out in relation to the reported killings, arrests and detention. Unfortunately, our communication has remained without a reply from your Government notwithstanding the year and seven months passed since then.

I am now writing to your Excellency's Government to reiterate our request and seek clarification with regard to reports I have received concerning the Independent Inquiry

Commission appointed by the Ethiopian Parliament to investigate these events and the loss of life during clashes between police and demonstrators during the first part of November 2005.

According to information since then received:

On 1 and 2 November 2005 a second wave of violent confrontations occurred in several cities, particularly in Addis Ababa, between the police and demonstrators questioning the validity of the election results. On 15 November 2005, the Federal Police Commissioner reported to Parliament that 35 civilians and seven policemen had lost their lives in Addis Ababa and its outskirts, 156 civilians and 338 policemen had been injured, over 153 vehicles, most of them public buses, had been damaged, and private property burned down. The Ethiopian Human Rights Council (EHRCO) announced in a report that as a result of shooting by the security forces to stop the protests of 1 November 2005 and the following days in Addis Ababa, 34 persons died, while 62 persons were wounded by bullet shots or beating. Subsequently, in a second report, EHRCO reported that 12 additional persons had been killed and nine persons had gone missing.

In December 2005, Parliament voted Proclamation 478/2005 appointing an 11-member commission to conduct an inquiry concerning the violence that occurred on 8 June 2005 in Addis Ababa and from 1 to 10 November and 14 to 16 November 2005 in Addis Ababa and some other parts of the country. The members of the Commission were judges, academics from universities, religious leaders and lawyers. Mr. Samuel Fire-Hiwot, President of the High Court of the Southern region, was the Chairperson of the Commission. Mr. Wolde-Michael, a judge appointed by the current government in 1994, was Deputy Chairperson of the Commission. On 25 April 2006, five members of the Commission were replaced. Parliament's Standing Committee on Legal and Administration Affairs stated that the five members resigned due to medical reason or denial of permission by their respective organisations, or excessive work burden.

The Commission spent the following six months interviewing over 600 people, including the Prime Minister, police officers, witnesses, and government officials. It appealed to Ethiopians to come forward voluntarily and report what they had witnessed. It also obtained thousands of medical reports of persons hospitalized as a consequence of the events and visited the locations of the clashes.

The Commission was originally due to release its report in March 2006. According to the information I have received, in early July 2006, shortly before completing their report, the Commission members held a vote. A majority of eight members (with two against) found that the security forces killed 193 persons including 40 teenagers, i.e. five times the death toll officially reported in the wake of the incidents. The vote also indicated that the majority of Commission members found that the security forces had used excessive force. The vote and comments of the Commission members were recorded on videotape. In the video, the Chairman of the Commission, Mr.

Samuel Fire-Hiwot, reportedly can be heard and seen stating that “many people were killed arbitrarily” and that “old men were killed while in their homes and children were also victims of the attack while playing in the garden”. Another Commissioner, Mr. Estatiose Gebrekristos, was reportedly recorded as saying, “from what my eyes, ears and knowledge tell me, the actions taken were 100 % wrong”.

According to the information I have received, the Commission came under intense pressure once members of the Ethiopian People's Revolutionary Democratic Front (EPRDF, the ruling party) learned of its findings. Electricity to the Commission offices was cut and at one point their office was allegedly surrounded by security forces. Two days before the report was to be released, the Commission was summoned by the Prime Minister and told to change its findings. Publication of the report was delayed and Mr. Fire-Hiwot resigned from his position as Chairperson of the Commission on 31 July 2006. He is believed to have fled Ethiopia. The Deputy Chairperson, Mr. Wolde-Michael, left Ethiopia in September 2006 after receiving anonymous death threats. On 21 October 2006, a third member of the Commission, Mr. Mitiku Teshome, also left Ethiopia following alleged pressures and threats.

On 18 October 2006, a draft of the Commission report was obtained by Associated Press through Mr. Wolde-Michael. Mr. Wolde-Michael was also reported as stating on the phone with the Associated Press from an undisclosed location that the events of 8 June and November 2005 were a “massacre”, that “[t]hese demonstrators were unarmed yet the majority died from shots to the head”, and that “there is no doubt that excessive force was used”.

On 21 October 2006, the findings of the official report were made public by the Ethiopian Parliament. This version of the report finds 193 civilians were killed during the incidents (this is the same figure as provided in the “leaked” version of the report), and that six members of the security forces lost their lives, with 71 injured by explosives, bullets, machetes, bottles, knives, rocks, and clubs. While conceding that mistakes were made, the report concludes that the security forces did not use excessive force. This version of the report is signed by eight Commission members, including Mr. Mitiku Teshome, but not judges Fire-Hiwot and Wolde-Michael.

As Special Rapporteur on extrajudicial, summary or arbitrary executions I would like to commend Ethiopia for establishing the Independent Inquiry Commission, for providing it the mandate and the means to conduct extensive fact finding, and for making its report public on the website of the Parliament. I remain, however, deeply concerned with regard to both the legal standards applied in the report published on the Parliament website in assessing whether the use of lethal force was justified, and with regard to the allegations of heavy-handed interference with the Commission’s independence and original findings.

As the officially published version of the report correctly states, the question whether the use of force by the security forces was compatible with human rights standards is to be examined in the light of the principles of legality, necessity and proportionality. The report also stresses “that the security forces in the process of implementing their

mission of protecting the lives and property of citizens had a strong constitutional responsibility to protect human rights. The commission also strongly believes that in the course of protecting legal rights from illegal acts, the measures to be taken should not exceed the damages that may be inflicted due to illegal actions and the security forces have a Constitutional accountability for disproportionate actions.”

Article 6 of the International Covenant on Civil and Political Rights, to which Ethiopia is a party, provides that no one shall be arbitrarily deprived of his or her life. Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, though not in itself binding law, provides an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces facing allegedly violent crowds:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

Instead of applying these principles and criteria to the individual incidents in which the security forces opened fire on demonstrators, the report limits itself to noting that “the crisis was vast indeed and involved a large number of people whose size was many times bigger than the number of security forces. When it seemed controlled in one place, it would explode in another which was a threat to the lives of the security forces as well as a great challenge.” While the report concedes in one line that human rights as set forth in the Constitution might not have been strictly respected, it immediately hurries to state that “[t]his, however, does not mean that the government did not make the effort to stop violations of human rights. The orders and instructions given repeatedly by officials to the security forces is a witness to this fact.” The published version of the report unfortunately does not contain any information as to what the orders and instructions given to the security forces were, nor does it explain what measures were taken to ensure that use of force complied with the requirements of necessity and proportionality.

The authors of the report then proceed to fatally weaken their application of the requirements of legality, necessity and proportionality with reference “to the principles of the democratization process and the objective condition of the country”. The report appears to imply that “the principles of the democratization process and the objective condition of the country” justify a relaxation of the protection of the right to life, as accomplished through compliance with the requirements of necessity and proportionality in the use of lethal force. It accordingly concludes that “the actions taken by the security forces to control the violence [were] a legal and necessary step to protect the nascent system of government and to stop the country from descending into a worse crisis and possibly never ending violen[t] upheaval. The issue of proportionality can not be seen outside these realities.”

It would thus appear that on its face, quite apart from the allegations of interference with the Commission's independence, the published report falls short of the obligations international law places on your Government with respect to the investigation of the circumstances under which 193 civilians lost their lives at the hands of security forces.

At this stage, I do not wish to prejudge the accuracy of the allegations regarding the pressure exercised on the members of the Commission to change their findings and the threats against them. If they were to be accurate, however, they would further undermine the credibility of the published report and constitute a grave violation of your Government's duty to ensure accountability for the killings carried out by the security forces.

It is my responsibility under the mandate provided to me by the Commission on Human Rights, reinforced by the appropriate resolution of the General Assembly, and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the allegations in the above summary of the case, particularly those regarding interference by your Government with the independence of the Commission, accurate? Does your Government accept the existence of the video tape recording the vote of the Commission members and their comments? Please provide all information and documents supporting your Government's position in this respect, including a copy of the video tape, if possible.
2. What were the instructions given to the security forces before and during the incidents resulting in the death of 193 civilians? How did the security forces ensure compliance with the requirements of necessity and proportionality?
3. The Commission appears to have found that "the principles of the democratization process and the objective condition of the country" justified a relaxation of the protection of the right to life, as accomplished through compliance with the requirements of necessity and proportionality in the use of lethal force. Is that a correct understanding of the Commission report? Does your Government share this position?
4. Does your Government intend to take any further steps to clarify the circumstances under which 193 civilians and six members of the security forces were killed, and to hold accountable those responsible of conduct violating applicable human rights norms? Please provide details of any further inquiries planned or undertaken or of any criminal proceedings initiated.
5. Will those injured by the security forces and the family members of those killed be compensated?

Ethiopia: Killing of Civilians in Mogadishu, Somalia

Violation alleged: Violations of the right to life during armed conflict

Subject(s) of appeal: Between approximately 700 and 1300 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 21 September 2007

I would like to bring to the attention of your Excellency's Government reports I have received regarding incidents of the killing of civilians in the Somali capital of Mogadishu between 29 March – 1 April 2007, 18 April – 26 April 2007, and on 19 June 2007 by your Government's armed forces. I have also written to the Transitional Federal Government of Somalia concerning similar allegations made against their armed forces. According to the information received:

Ethiopian forces indiscriminately and disproportionately deployed mortar, rocket, and artillery attacks against insurgent forces into civilian neighbourhoods. Insurgents often used mobile tactics by launching mortars at Ethiopian bases from a civilian populated area, and then leaving the area. It is alleged that Ethiopian counter-attacks and offensives against insurgents generally struck the civilian areas from which insurgent attacks were launched, but that Ethiopian forces failed to take feasible precautions to avoid or minimize civilian casualties, failed to verify that targets were military objectives, and failed to discriminate between military and civilian objectives. The evidence provided for these allegations is that the Ethiopian forces engaged in the following means and methods of warfare: area bombardments of civilian areas using weapons (such as BM-21 multiple barrel rocket launchers); firing mortars indiscriminately (by failing to systematically use spotters or guidance systems when firing from distances of over two kilometres) into populated civilian areas; and firing rockets into civilian neighbourhoods in systematic patterns at regular intervals (evidencing a lack of military targeting). According to allegations received, these attacks occurred between 29 March and 1 April 2007 (in the Somali neighbourhoods of Bar Ubah, Al-Baraka, Shirkole, Towfiq, Hamar Bile, Suq Ba'ad, and Hamar Jadid), and between 18 April and 26 April 2007 (in the Somali neighbourhoods of Towfiq, Hamar Jadid, Bar Ubah, Hararyale, Suq Ba'ad, Jamhuriya, and Huriwa). The attacks are alleged to have resulted in the deaths of between approximately 700 and 1300 civilians.

I have also received allegations that some civilian areas may have been intentionally targeted by Ethiopian forces. Allegations received suggest that while most attacks were directed against neighbourhoods used by insurgents to launch attacks, some neighbourhoods without any insurgent presence were also hit. Further, it is alleged that Ethiopian troops summarily executed identifiable civilians. The following specific allegations have been brought to my attention:

1. On 29 March 2007, it is alleged that an Ethiopian soldier intentionally shot and killed a civilian woman. The woman, approximately 50 years old and identified as “Noura”, was allegedly shot with a machine gun, and died immediately in the Charcoal Market in Towfiq while hiding behind a lorry.
2. On 19 June 2007, it is alleged that when an Ethiopian military convoy was hit by a roadside bomb near Jaalle Siyad College, the soldiers fired on a civilian minibus at the Industrial Road at approximately 3 p.m., killing an unidentified passenger.
3. On 19 June 2007, the soldiers from the attacked convoy are further alleged to have raided a civilian house in the Damanyo neighborhood, and at approximately 4.30 p.m. to have intentionally shot and killed three brothers named Abdulkadir Ibrahim Diriye, Sharmarke Ibrahim Diriye, and 17 year old Jama Ibrahim Diriye; and a fourth man, 19 year old Abdi Abdullahi Abdulle. The men were found by relatives shortly after the shootings, each body evidencing multiple bullet wounds. Abdi Abdullahi Abdulle was found dead with his hands tied behind his back.

While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency’s Government to the fundamental legal rules applicable to all non-international armed conflicts under international humanitarian law and human rights law. Under international humanitarian law, the conflict in Somalia is a non-international armed conflict because, despite the involvement of two states, your country was acting with the consent of Somalia. As a signatory to the Geneva Conventions and their Additional Protocols, and by virtue of the customary status of these fundamental norms, your Government is required in an armed conflict to, at all times, distinguish between combatants and civilians and to direct attacks only against combatants (Articles 13(2) and 13(3) of Additional Protocol II; Rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”). Indiscriminate attacks are prohibited (Rule 11 of the Customary Rules). Specifically, attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, or village are prohibited (Rule 13 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). All feasible precautions must be taken to avoid and minimize incidental loss of civilian life (Rule 15 of the Customary Rules).

I would like to bring to your Government’s attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life, a right enshrined in humanitarian and human rights law. In relation to the allegations of intentional targeting of civilians, we would further like to bring to your attention that intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities is a war crime (Article 8(2)(e)(i) of the Rome Statute of the International Criminal Court), and that your Government has a specific obligation to investigate war crimes allegedly committed by your

nationals or armed forces, and, if appropriate, to prosecute the suspects (Rule 158 of the Customary Rules).

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

1. Are the facts alleged in the above summary accurate? Please refer to the results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incidents.
2. Please provide the details of any disciplinary measures imposed on or criminal prosecutions against members of the armed forces responsible for the alleged incidents.
3. With respect to the allegations of indiscriminate attacks, what, if any, assessment was made to ensure that the attacks on each of the Somali civilian neighborhoods complied with the rules of international humanitarian law and human rights law? Specifically, what safeguards, if any, were employed to verify that only legitimate military targets were attacked? What methods were adopted to distinguish between military and civilian objects? What precautions were taken in the launching of mortar, artillery, rocket or other attacks to minimize loss of civilian life? What means and methods of warfare were adopted to avoid incidental loss of civilian life, and to ensure that incidental loss of life was not excessive in relation to the anticipated military advantage?
4. With respect to allegations of the summary executions civilians, what measures were adopted to ensure that members of the armed forces respected the right to life of all civilians at all times?
5. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

Fiji: Death in Custody of Tevita Malasebe, Sakiusa Rabaka, Nimilote Verebasaga

Violation alleged: Deaths in custody

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 29 August 2007 sent with the special Rapporteur on Human Rights and counter terrorism and the Special Rapporteur on the question of torture

We are writing concerning three incidents this year in which persons are reported to have died in either police or military custody in Fiji, following their initial arrest. It is reported that investigations into the killings have been inconclusive and that the perpetrators have not been prosecuted.

According to information we have received:

Tevita Malasebe was arrested at the family home in Suva on 4 June, 2007 during the night by 8 members of the Fiji Police (“strike back team”). Shortly after his arrest, members of Tevita’s family travelled to the Valelevu Police Station asking to see him. Officers at the Station however denied that Tevita was being held, although the van that had transported him to the station was reportedly parked outside and three officers involved in Tevita’s arrest were observed at the station. A few hours later, a phone call was received advising the family that Tevita was in CWM hospital, where family members later observed Tevita’s bruised corpse. A Police Officers Order for Burial/cremation (form 5) reports the cause of death of Tevita as “shock and internal haemorrhage due to multiple bruises as a complication of multiple blunt impacts”. Post mortem photos we have reviewed appear to indicate substantial bruising to the body of the deceased.

According to information we have received Sakiusa Rabaka was arrested in the course of a joint military police operation on 28 January 2007. He was questioned by the military in Nadi and reportedly died three weeks later of a brain haemorrhage, for which he received emergency surgery. Then police Commissioner Romanu Tikotikoca reportedly stated that police were treating his death as murder and investigations were ongoing against suspects including one police man and six or seven soldiers.

According to information we have received, Nimilote Verebasaga was arrested by the police at the family home in Nakaulevu early in the morning of 5 January, 2007 and taken to the military barracks for questioning. He was pronounced dead on arrival at the CWM hospital in Suva and the body reportedly showed visible signs of broken ribs and a broken neck. The family later recovered his body from the Suva morgue.

Without in any way implying any conclusion as to the facts of the case, we recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right not to be arbitrarily deprived of one’s life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. This means that a State is presumed to be responsible for the death of the person under international law, unless clear evidence to the contrary emerges, explaining how the death occurred. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermitt Barbato v. Uruguay*, communication no. 84/1981 (1990)): “While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermitt

committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.”

We should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the deaths of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, “stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed”.

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

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

Guatemala: Amenazas de Muerte en contra de Maynor Roberto Berganza Betancourt y su Familia

Violación alegada: Amenazas de muerte

Persona objeto del llamamiento: Un hombre (abogado y defensor de los derechos humanos) y su familia

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

Relator Especial agradece al Gobierno de Guatemala por la información que ha proporcionado relativa a las medidas adoptadas para garantizar la seguridad de Maynor Roberto Berganza Betancourt. El Relator Especial espera información sobre los resultados de las investigaciones mencionadas en dicha respuesta.

Llamamiento urgente del 27 de octubre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido con relación a las amenazas de muerte en contra del abogado y defensor de los derechos humanos Maynor Roberto Berganza Betancourt, que encontré durante mi visita a Guatemala entre el 21 y 25 de Agosto de este año.

De acuerdo a la información recibida:

El 22 de Agosto, el Sr. Berganza Bethancourt recibió una llamada telefónica en la que un desconocido le dijo: "dejémonos de rodeos, pertenezco a una banda del crimen organizado y nos contrataron para matarlo". El Sr. Berganza colgó el teléfono pero según mis fuentes, unos minutos después el mismo desconocido volvió a llamar y añadió: "así como nos bajamos al gobernador así te vamos a bajar a vos. Ahora te vamos a ir a sacar de donde estás, porque te tenemos controlado".

Según se me ha informado, el 24 de Agosto, un desconocido llamó al celular del Sr. Berganza Bethancourt y lo amenazó diciéndole: "Si no quiere a su familia, hay dos personas que están conmigo que me están pidiendo que les demos agua". Ese mismo día un desconocido habría entrado a la oficina del Sr. Berganza Bethancourt. Cuando se le cuestionó sobre el motivo de su visita, el hombre mostró un carnet de miembro del "Comité Central de Acción". Al preguntársele dónde estaba ubicada la sede de la organización, el hombre respondió que en "La Casa Presidencial" e inmediatamente se fue de la oficina. A través de una carta enviada el 7 de septiembre de 2006, el Relator Especial sobre la independencia de magistrados y abogados y el Representante Especial del Secretario-General para los defensores de los derechos humanos, informaron al Gobierno de su Excelencia sobre algunas de las amenazas de muerte que venía recibiendo el Sr. Berganza Betancourt y respetuosamente solicitaron que se les informara sobre las medidas adoptadas para garantizar su integridad física y psicológica. Sin embargo, teniendo en cuenta que las amenazas de muerte en contra del Sr. Berganza continúan y que hasta la fecha no hemos recibido ninguna respuesta por parte de su Gobierno con relación a este caso, deseo expresar mi inquietud por la seguridad del Sr. Berganza Bethancourt, e informar con profunda preocupación que las amenazas descritas en la presente carta podrían estar ligadas a la entrevista personal que el Sr. Berganza Bethancourt sostuvo conmigo, en mi calidad de Relator Especial para las ejecuciones extrajudiciales sumarias o arbitrarias, durante mi visita a Guatemala entre el 21 y 25 de Agosto de este año.

Teniendo en cuenta la urgencia del caso, agradecería recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para garantizar la seguridad

del Sr. Berganza Bethancourt y su familia, la investigación exhaustiva e imparcial de las amenazas en su contra, y la imposición de sanciones adecuadas a cualquier persona responsable de las violaciones alegadas.

Asimismo, quisiera llamar la atención de su Gobierno sobre las siguientes normas y principios que son particularmente significativos con respecto a las denuncias mencionadas precedentemente:

- Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, los principios 4 y 9 a 19 obligan a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte. Los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

- Principios básicos sobre la función de los abogados, adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, La Habana, 27 de agosto a 7 de septiembre de 1990. Según los principios 16 y 17, los gobiernos garantizarán que los abogados puedan desempeñar todas sus funciones profesionales sin intimidaciones, obstáculos, acosos o interferencias indebidas y sin sufrir, ni estar expuestos a persecuciones o sanciones administrativas, económicas o de otra índole. Cuando la seguridad de los abogados sea amenazada a raíz del ejercicio de sus funciones, recibirán de las autoridades protección adecuada.

Además, deseo llamar la atención del Gobierno de Su Excelencia sobre la resolución 1994/70, adoptada por la Comisión de Derechos Humanos el 9 de marzo de 1994, la cual pide a los Gobiernos, entre otras cosas, que se abstengan de todo acto de intimidación o represalia contra particulares y grupos que traten de cooperar o hayan cooperado con representantes de los órganos de las Naciones Unidas, prestando testimonio ante ellas, proporcionándoles información, valiéndose de los procedimientos establecidos bajo los auspicios de las Naciones Unidas para la protección de los derechos humanos y las libertades fundamentales y presentándoles comunicaciones, o prestando asistencia jurídica con tal fin. Según esta resolución, también deben ser protegidos los parientes de víctimas de violaciones de los derechos humanos.

De acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos, mandato reforzado por las resoluciones pertinentes de la Asamblea General, es mi responsabilidad intentar conseguir clarificación sobre los hechos llevados a mi atención. En mi deber de informar sobre esos casos al Consejo de Derechos Humanos, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

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

2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con las amenazas en contra del Sr. Maynor Roberto Berganza Bethancourt.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, proporcione información sobre las medidas adoptadas para garantizar la seguridad del Sr. Maynor Roberto Berganza Bethancourt y su familia.

Respuesta del Gobierno de Guatemala del 23 de abril de 2007

A la interrogante Son exactos los hechos a los que se refieren las alegaciones presentadas por la víctima?, el Estado de Guatemala manifiesta:

El Estado de Guatemala, por medio del Ministerio Público, está realizando la investigación de mérito sobre los hechos denunciados los días 12 y 22 de agosto del 2006.

A la interrogante Fue presentada alguna queja? Sobre este extremo el Estado de Guatemala indica:

Que el día 22 de agosto del 2006, el Señor Berganza presentó denuncia penal en la oficina de atención permanente del Ministerio Público.

En cuanto al tema sobre cuáles han sido las diligencias judiciales y administrativas practicadas.

La Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos, el día 6 de septiembre del 2006, coordinó con el Ministerio de Gobernación y el señor Berganza Bethancourt, seguridad personal, como medida preventiva con el objeto de salvaguardar la integridad física y la vida de este. Debido a lo anterior, desde el día 6 de Septiembre de 2006 el señor Berganza Bethancourt, cuenta con seguridad de tipo personal, por parte del Estado de Guatemala.

En cuanto a las actuaciones de índole judicial el Estado de Guatemala manifiesta que, el Ministerio Público informó que está realizando las investigaciones necesarias para individualizar a los responsables de los hechos denunciados.

El Ministerio Público, asignó a la Fiscalía Segunda de Desjudicialización, para que lleve a cabo la investigación de los hechos denunciados, por el señor Berganza. Debido a lo anterior el día 17 de noviembre de 2006 la Fiscalía del Ministerio Público que lleva el caso, oficio a la Dirección de Investigaciones del Ministerio Público para realizar la investigación de mérito, adicionalmente el día 27 de noviembre del 2006, se citó al señor Berganza Bethancourt, para que ratificara la denuncia presentada y ampliara la ya presentada si lo considera necesario.

Sobre las medidas adoptadas para garantizar la seguridad del Señor Maynor Roberto Berganza Bethancourt.

Se informa que como se indicó con anterioridad al Estado de Guatemala, por medio de la Dirección de Protección a Personalidades de la Policía Nacional Civil esta brindando seguridad preventiva de tipo personal al señor Berganza Bethancourt desde el día 6 de septiembre de 2006.

Guatemala: Muerte de Adilio Darinel Domingo

Violación alegada: Impunidad

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Guatemala por la información que ha proporcionado relativa a la muerte de Adilio Darinel Domingo. El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones del Ministerio Público.

Carta de alegación del 30 de noviembre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido con relación a la muerte del Sr. **Adilio Darinel Domingo**.

Según las informaciones recibidas, el 21 de enero de 2006, el Sr. Adilio Darinel Domingo Montejo salió de su casa, ubicada en la Colonia Alioto López de Villa Nueva, Guatemala, y no regresó. Su cuerpo fue encontrado por uno de sus hermanos el 26 de enero, en la morgue de Amatitlán. Presentaba severas señales de tortura, degollado y con ambas piernas cercenadas a la altura de la ingle. Sólo una de sus piernas fue encontrada al momento del hallazgo del cuerpo.

La otra fue encontrada una semana después, cerca de un barranco, en la zona 12 capitalina.

Dadas las condiciones, parece obvio que el Sr. Montejo fue asesinado por razones ajenas a la delincuencia común, y se teme que este homicidio pueda estar relacionado con el trabajo de uno de sus hermanos, el Sr. Mario Gonzalo Domingo Montejo, que actúa como Coordinador del Área de Defensa de la Dignidad Humana, de la Oficina de Derechos Humanos del Arzobispo de Guatemala. Dentro de las actividades realizadas por ésta Oficina, resaltan las investigaciones y el proceso del caso por el caso del Monseñor Juan José Gerardi Conedera ocurrida el 26 de abril de 1998. El juicio para esclarecer la muerte del Monseñor Gerardo Conedera concluyó el 7 de junio del año 2001, con sentencia para cuatro personas: el coronel Byron Disrael Lima Estrada, el capitán Byron Miguel Lima Oliva, el especialista del Ejército José Obdulio Villanueva Arévalo, y el sacerdote Mario Lionel Orantes Nájera, los tres primeros

como autores del delito de ejecución extrajudicial, y el último por complicidad del mismo. La sentencia fue modificada en marzo de 2005, en donde se les endilgó, a todos, como cómplices del delito de ejecución extrajudicial. El expediente fue elevado ante la Corte Suprema de Justicia por interposición del recurso técnico de casación, y al respecto se dictó sentencia el día 9 de enero de 2006, la cual fue notificada el 12 de enero de 2006.

En estas circunstancias, y sin implicar de antemano una conclusión sobre los hechos, hago un llamado al Gobierno de Su Excelencia para que me proporcione información detallada sobre las medidas adoptadas para garantizar la investigación de las violaciones mencionadas en esta carta, así como el procesamiento y castigo de las personas responsables de dichas violaciones.

A este respecto, me gustaría llamar la atención de su Gobierno sobre artículo 2 del Pacto Internacional de Derechos Civiles y Políticos, que provee que los Estados partes deben “respetar y garantizar a todos los individuos que se encuentren en su territorio y estén sujetos a su jurisdicción los derechos reconocidos en el presente Pacto,” incluyendo el derecho a la vida. Según esta obligación general, los Estados deben investigar, enjuiciar y castigar efectivamente cualquiera privación arbitraria de la vida. (Véase Comité de Derechos Humanos, *Arhuacos v. Colombia*, Comunicación 612/1995, § 8.8; Comité de Derechos Humanos, Observación General 31). También, me gustaría llamar la atención de su Gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamo la atención sobre los principios 9 y 19 según los cuales, que explican detalladamente estos deberes.

De acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos, mandato reforzado por las resoluciones pertinentes de la Asamblea General, es mi responsabilidad intentar conseguir clarificación sobre los hechos llevados a mi atención. En mi deber de informar sobre esos casos al Consejo de Derechos Humanos, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos referidos?
2. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a la muerte del Señor Adilio Darinel Domingo Montejo.
3. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de Guatemala del 8 de marzo de 2007

Sobre la interrogante ¿Son exactos los hechos referidos?

Hasta el momento el Ministerio Público aun no ha individualizado los autores del hecho, por lo que tampoco tiene el motivo de la muerte del señor Darinel Domingo.

Sobre la información detallada, sobre las investigaciones, el Estado de Guatemala manifiesta:

El Expediente se identificó con el número MP015/2006/66 a cargo de la Agencia 7 de la Fiscalía de Villa Nueva.

En el lugar donde se encontró el cuerpo del Señor Darinel Domingo, el día 23 de diciembre se constituyó el grupo de especialistas en Escena del Crimen conjunto con el Auxiliar de turno.

Posteriormente se solicitó el informe del Protocolo de la Necropsia a la Morgue del Organismo Judicial ubicada en el Hospital del Municipio de Amatitlan departamento de Guatemala.

Se solicitó el informe a los técnicos de la escena del crimen.

Se presentó el Hermano del señor Darinel Domingo a reconocerlo por medio de fotografías, tomadas al cuerpo.

Se solicitó certificación de defunción al Registro Civil de la Municipalidad de Villa Nueva.

Se tomó la declaración de la madre del señor Darinel Domingo.

Se tomó declaración al hermano del señor Darinel Domingo.

Se solicitó autorización para obtener desplegados telefónicos.

Se envió un oficio a la sección de homicidios de la policía nacional civil, sobre los nuevos lineamientos de la investigación en este caso.

¿En cuanto si han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables? El Estado de Guatemala indica:

Que debido al estado de la investigación realizada por el Ministerio Público, aun no se han individualizado a los autores de la muerte del señor Darinel Domingo, por lo que al momento de individualizarlos el Estado por medio del Organismo Judicial iniciará el proceso respectivo.

En cuanto a la interrogante que se refiere a si el Estado de Guatemala ha dado algún tipo de compensación a modo de indemnización a la familia del señor Darinel Domingo.

Se manifiesta que por el momento y debido que aún el Ministerio Público está realizando la investigación de mérito y no se han podido individualizar a los actores del hecho, por lo que el Estado de Guatemala no ha realizado ningún pago en concepto de indemnización a los familiares del señor Darinel Domingo.

Guatemala: Muerte de Florentín Gudiel Ramos y Amenazas de Muerte contra su Familia

Violación alegada: Muerte a consecuencia de ataque o asesinato por fuerzas de seguridad o por grupos paramilitares; Amenazas de muerte

Persona objeto del llamamiento: 1 hombre y 1 mujer (defensores de los derechos humanos) y su familia

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Guatemala por su respuesta. El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

Carta de alegación del 30 de noviembre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido con relación a la muerte del Sr. Florentín Gudiel Ramos y a las amenazas contra su familia.

Según las informaciones recibidas:

El día 20 de diciembre de 2004 a las diez de la mañana el Sr. Gudiel se dirigía en bicicleta a su casa, ubicada en la Municipalidad de Santa Lucía Cotzumalguapa. Trescientos metros antes de llegar a su casa fue interceptado por hombres armados en una camioneta gris con vidrios polarizados, quienes le dispararon por la espalda con una escuadra 9mm. Cuando el Sr. Gudiel hizo un esfuerzo por levantarse, uno de los hombres le puso el pie en el pecho, le disparó en la sien izquierda y luego procedió a dispararle un tiro de gracia. Después de estos tiros, uno de los atacantes disparó varios tiros al aire. Durante los ritos del velorio y en los días siguientes la familia y los amigos de la víctima recibieron varias amenazas. Alrededor de las nueve de la noche del día del ataque, una presunta patrulla de siete militares encabezados por “Kaibil” llegó en una camioneta blanca sin placas y se apostaron frente de la casa del Sr. Gudiel. Uno de los presuntos soldados, portando un rifle con mira telescópica, se subió un árbol. En otro día, durante el rezo de la novena, un coche rojo con hombres armados y vistiendo playeras del Frente Republicano Guatemalteco (FRG), se apostó frente a la casa. Las personas que participaban en los rezos empezaron a recibir amenazas indicando que sufrirían la misma suerte que el Sr. Gudiel. Los miembros de la familia del Sr. Gudiel, en particular su hija, Sra. Makrina Gudiel Alvarez, también recibieron mensajes indicando que deben huir. Al término de la novena, el 29 de diciembre, la familia dejó sus casas en compañía de la Policía Municipal de Tránsito de Santa Lucía Cotzumalguapa. Se teme que el homicidio y las amenazas puedan estar ligados al trabajo de Sr. Gudiel y su hija. Sr. Gudiel fue involucrado en varios esfuerzos escolares y comunitarios. También, junto con su familia, había estado buscando justicia ante la desaparición forzada de su hijo José

Miguel Gudiel Álvarez, y quince días antes de su muerte había ido a dejar los últimos papeles para completar su expediente. La Sra. Gudiel está involucrada en movimientos sociales y fue oficial y candidata de la Unidad Revolucionaria Nacional Guatemalteca (URNG). Ella también ha participado en la elaboración del expediente de su hermano.

En estas circunstancias, y sin implicar de antemano una conclusión sobre los hechos, hago un llamado al Gobierno de Su Excelencia para que me proporcione información detallada sobre las medidas adoptadas para garantizar la investigación de las violaciones mencionadas en esta carta, así como el procesamiento y castigo de las personas responsables de dichas violaciones.

A este respecto, me gustaría llamar la atención de su Gobierno sobre artículo 2 del Pacto Internacional de Derechos Civiles y Políticos, que provee que los Estados partes deben “respetar y garantizar a todos los individuos que se encuentren en su territorio y estén sujetos a su jurisdicción los derechos reconocidos en el presente Pacto,” incluyendo el derecho a la vida. Según esta obligación general, los Estados deben investigar, enjuiciar y castigar efectivamente cualquiera privación arbitraria de la vida. (Véase Comité de Derechos Humanos, Arhuacos v. Colombia, Comunicación 612/1995, § 8.8; Comité de Derechos Humanos, Observación General 31). También, me gustaría llamar la atención de su Gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamo la atención sobre los principios 9 y 19 según los cuales, que explican detalladamente estos deberes.

De acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos, mandato reforzado por las resoluciones pertinentes de la Asamblea General, es mi responsabilidad intentar conseguir clarificación sobre los hechos llevados a mi atención. En mi deber de informar sobre esos casos al Consejo de Derechos Humanos, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos referidos?
2. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a la muerte del Señor Florentín Gudiel.
3. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del gobierno de Guatemala del 4 de abril de 2007

I. Antecedentes del Caso

Según la información recibida, el día 20 de diciembre de 2004 a las diez de la mañana, el señor Florentin Gudiel Rames se dirigía en bicicleta a su ubicada en el municipio de Santa Lucía Cotzumalguapa, Departamento de Escuintla. Al parecer, a trescientos metros antes de llegar a su casa fue interceptado por hombres armados en una camioneta gris con vidrios polarizados, quienes le dispararon por la espalda con una escuadra 9mm. Cuando el señor Florentin Gudiel Ramos hizo un esfuerzo para levantarse, uno de los hombres le puso el pie en el pecho y le disparó en la sien izquierda y luego procedió a dispararle "un tiro de gracia". Después de estos hechos, uno de los atacantes hizo disparos al aire.

Según la información, días después del velorio la familia del señor Florentín Gudiel Ramos fue amenazada de muerte supuestamente por parte de personas pertenecientes a una patrulla de siete militares encabezados por un sujeto identificado como "Kaibil" y otros supuestos militares que portaban playeras con el símbolo del partido político del Frente Republicano Guatemalteco - FRG-. Esta situación se agravó al extremo que el día 29 de diciembre de 2006, la familia se vio en la necesidad de abandonar sus hogares y tuvieron que ser escoltados por la Policía Municipal de Tránsito de Santa Lucía Cotzumalguapa.

Se teme que el asesinato del señor Florentin Gudiel Ramos y las amenazas en contra de su hija Makrina Gudiel esté relacionado con varios esfuerzos escolares y comunitarios que se han hecho en beneficio de las comunidades de esa localidad, así como la búsqueda de justicia sobre el caso de desaparición forzada de José Miguel Gudiel Álvarez, y la participación política de Makrina Gudiel en el partido político de la Unidad Revolucionaria Nacional de Guatemala --URN G-.

II. Pronunciamiento del Estado de Guatemala

Ante: esta situación, el Estado de Guatemala, sobre el presente caso, informa que hasta la presente fecha se han realizado una serie de diligencias por parte del órgano de persecución penal, sin poder establecer aun, si los hechos a que se refieren las denuncias interpuestas a nivel nacional e internacional son exactos. Sin embargo, de conformidad con el informe preliminar del Ministerio Público, el Estado de Guatemala ha establecido lo siguiente:

1. Con fecha 19 de septiembre de 2006, se rindió informe relacionado al caso de mérito, en el cual indica que aún no ha sido posible individualizar a los autores materiales, e intelectuales del crimen; y sí se ha incluido en la investigación la posible participación de los señores Ángel Azurdia y Miguel Estrada.
2. Se han realizado una serie de diligencias entre otras, inspección y croquis relacionados al lugar de los hechos, múltiples declaraciones testimoniales, solicitud y recepción de informes de distintas instituciones relacionadas a actuaciones criminalísticas.
3. Denuncia presentada por la señora Makrina Gudiel, en la cual pone del conocimiento que personas que no pudo identificar rociaron un líquido sobre el vehículo que conducía, indicando que no pudo reconocer a las personas que cometieron el hecho delictivo.

4. La señora Makrina Gudiel no ha solicitado ser acogida por el Programa de Protección a Testigos.
5. La señora Makrina Gudiel u otros familiares de la víctima no se han constituido como querellante adhesivo.
6. A la fecha el expediente se encuentra en fase de investigación.

Hasta la presente fecha no se ha establecido aún por parte del órgano de persecución penal, la presunta participación de cuerpos ilegales de seguridad o bien de comisionados militares en el hecho delictivo.

III. Acciones del Gobierno de Guatemala Sobre la Temática

El Estado de Guatemala se encuentra conciente de la grave situación que atraviesa el país en el marco de los derechos humanos, en el sentido que no han sido efectivas aún las medidas por parte de sus instituciones para garantizar la protección de los derechos a la vida, la seguridad y la integridad de personas que se desempeñan en la labor de la defensa de los derechos humanos.

Por otro lado, el Gobierno de Guatemala se encuentra ante el enorme reto de investigar y esclarecer denuncias y casos concretos que se relacionan con ejecuciones extrajudiciales por parte de supuestos "escuadrones de la muerte" en los que se presume la participación de elementos de la Policía Nacional Civil.

En ese orden de ideas, el Estado de Guatemala se encuentra en la fase de aprobación a través del Congreso de la República sobre el Acuerdo para la creación de una Comisión Internacional Contra la Impunidad en Guatemala -CICIG-cuyo fin es el de apoyar al Estado de Guatemala para desarticular los cuerpos ilegales de seguridad y los aparatos clandestinos de seguridad. En ese sentido, su objetivo fundamental es enfrentar a estos cuerpos ilegales mediante el fortalecimiento al Sistema de Justicia para la erradicación de la impunidad en el país. Esta iniciativa plantea no solo la necesidad de proteger a las personas y el trabajo de los defensores y las defensoras de derechos humanos, sino también la defensa de la justicia en general y el pleno ejercicio de los derechos humanos en Guatemala.

La CICIG persigue fundamentalmente apoyar la lucha contra la Impunidad en el país y apoyar al sistema de justicia, un especial al Ministerio Público en la investigación de aquellos cuerpos ilegales y aparatos clandestinos de seguridad que más atentan contra la población y debilitan la justicia. El Acuerdo de su creación define su objetivo fundamental así:

a) Apoyar, fortalecer y coadyuvar a las instituciones del Estado de Guatemala encargadas de la Investigación y la persecución penal de los delitos presuntamente cometidos con ocasión de la actividad de los cuerpos ilegales de seguridad y aparatos clandestinos de seguridad.... ; así como en la determinación de sus estructuras, actividades, formas de operación y fuentes de financiamiento, promoviendo tanto la desarticulación de dichas organizaciones como la sanción penal de los partícipes de los delitos cometidos.

- b) Crear los mecanismos y procedimientos necesarios, que deberán implementarse para la protección de los derechos a la vida y a la integridad de las personas...;
- c) Para dichos efectos, se crea una Comisión Internacional contra la Impunidad en Guatemala, con arreglo a las disposiciones del presente Acuerdo, los compromisos del Estado establecidos en instrumentos nacionales e internacionales de derechos humanos y especialmente en el Acuerdo Global sobre Derechos humanos romanos IV, 17 Vil. 3

En ese sentido, el Estado de Guatemala informa que sobre la fase de aprobación de la propuesta de la creación de la CICIC, ésta ha sido revisada por el Pleno del Congreso de la República, la cual previo a su aprobación ha decidido trasladar la propuesta a la Corte de Constitucionalidad para su dictamen respectivo.

Por otro lado, es importante que se considere que el Gobierno de Guatemala mediante el Acuerdo Gubernativo 74-2007, plantea la urgente necesidad de ordenar la depuración de la Policía Nacional Civil, el cual en su artículo segundo se establece que : "se instruye al Ministro de Gobernación para que atienda lo dispuesto en el artículo anterior, y para que un plazo de (15) días contados a partir de la vigencia del presente Acuerdo prepare y presente proyecto de reformas al Acuerdo Gubernativo número 420-2003, Reglamento disciplinario de la Policía Nacional Civil, que permita reducir los plazos del procedimiento disciplinario administrativo, en concordancia con el principio de celeridad en la ley de la Policía Nacional Civil."

Asimismo, el Gobierno de Guatemala mediante el Acuerdo Gubernativo 79-2007, plantea la necesidad de fortalecer las instituciones que tienen competencia en el ámbito de la seguridad, a fin de que el Estado cuente con las herramientas que le permitan el cumplimiento de sus obligaciones constitucionales (artículos 1, 2 y 3 de la Constitución Política de la República de Guatemala).

En ese contexto, se crea la Comisión Presidencial del Sistema Nacional de Seguridad, órgano con carácter temporal del Organismo Ejecutivo, la cual es integrada con miembros permanentes tales como: el Vicepresidente de la República de Guatemala, quien la preside; el Ministro de Gobernación; el Ministro de la Defensa Nacional; el Ministro de Relaciones Exteriores y el Secretario de Análisis Estratégico de la Presidencia. (Artículo 2 Acuerdo Gubernativo 79-2007).

La Comisión Presidencial del Sistema Nacional de Seguridad tendrá las funciones siguientes (Artículo 3 del Acuerdo Gubernativo 79-2007)

- a. Proponer la creación del Sistema Nacional de Seguridad;
- b. Diseñar y proponer mecanismos que permitan la reestructuración y depuración de la Policía Nacional Civil;
- c. Proponer reformas a la Ley de la Policía Nacional Civil, para facilitar su fortalecimiento institucional;
- d. Proponer medidas tendientes a la reestructuración y fortalecimiento de la Secretaría de Análisis Estratégico de la Presidencia; y

e. Otras que asigne el Presidente de la República.

El Estado de Guatemala considera que estas acciones están encaminadas a emprender un esfuerzo importante para fortalecer al sistema de justicia cuyo fin primordial sería el esclarecimiento de casos relacionados con ejecuciones extrajudiciales y establecer un patrón de investigación de cuerpos ilegales de seguridad, así como la participación de elementos de la Policía Nacional Civil.

Honduras: Muerte de Heraldo Zuñiga y de Roger Ivan Cartagena

Violación alegada: Muerte a consecuencia de ataque o asesinato por fuerzas de seguridad

Persona objeto del llamamiento: 2 hombres

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

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

Llamamiento urgente del 20 de febrero de 2007 mandado con el mandato con el Representante Especial del Secretario-General para los defensores de los derechos humanos

Quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con los asesinatos del Sr. Heraldo Zuñiga y Sr. Roger Ivan Cartagena, miembros del movimiento ambientalista de Olancho que tuvieron lugar el 20 de diciembre de 2006 en el departamento de Olancho. Se teme que estos asesinatos estén relacionados con sus actividades en defensa de los derechos humanos.

De acuerdo con la información recibida:

El 20 de diciembre, el Sr. Heraldo Zuñiga y el Sr. Roger Ivan Cartagena fueron asesinados por agentes de la policía nacional afuera de la oficina del Mayor de Guarizama, delante de varios residentes del barrio. Según los informe, días antes de su muerte, el Sr. Heraldo Zuñiga había expresado preocupación por las amenazas de los madereros que explotan el bosque en el sector de Salamá. Se teme que la policía pueda estar involucrada con las compañías de maderero y que esté implementando una campaña de hostigamiento en contra de los ambientalistas en la región.

Se expresa temores de que los asesinatos del Sr. Heraldo Zuñiga y Sr. Roger Ivan Cartagena puedan estar relacionados con sus actividades en defensa de los derechos humanos, en particular su trabajo con el movimiento ambientalista de Olancho.

Sin implicar de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en el Pacto Internacional de Derechos Civiles y Políticos. El artículo 6 de este instrumento garantiza a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

Quisiéramos instar a su Gobierno que adopte todas las medidas necesarias para investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas de conformidad con los principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias, o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

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

Además, quisiéramos referirnos a los artículos siguientes:

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

Es nuestra responsabilidad de acuerdo con el mandato que nos ha entregado la Comisión de Derechos Humanos y prorrogado por el Consejo de los Derechos Humanos intentar conseguir clarificación sobre los hechos llevados a mi atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones?
2. ¿Fue presentada alguna queja?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, indique si los familiares obtuvieron algún tipo de compensación a modo de indemnización.

India: Deaths Following Protests in the Nandigram Area of West Bengal

Violation alleged: Deaths due to excessive use of force by law enforcement officials

Subject(s) of appeal: At least 14 civilians

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 19 March 2007

I am writing in relation to reports of killings of civilians by the security forces of the state of West Bengal in connection with protests in the Nandigram area of East Midnapur district, West Bengal. While the reports I have received do not establish a clear picture of the events in Nandigram since 13 March 2007, I am bringing my concerns to your attention in the form of an urgent appeal because it is my understanding that the law enforcement operation which has cost an undetermined number of lives since 14 March 2007 may still be ongoing.

According to the information received:

A project to establish a Special Economic Zone (SEZ), including a chemical plant, in Nandigram, a mainly agricultural area, has sparked protests by local farmers and opposition parties. The SEZ, which is to be developed jointly by the state-owned Industrial Development Corporation and foreign investors, is supported by the West Bengal state government. Beginning on 3 January 2007, protesters set up road blocks on all access roads to Nandigram, effectively cutting off Nandigram from the rest of the region. Nandigram was transformed into a 'no-entry' zone for the state administration and cadres of the governing Communist Party of India (Marxist, CPI(M)) were driven out. Deep trenches were dug in all approach roads and bridges were damaged to prevent vehicular traffic.

On 14 March 2007, shortly after midnight, security forces consisting of state police, Rapid Action Force, Eastern Rifles and other West Bengal state security forces, about 5,000 men strong, entered the Nandigram area to restore the severed communication links with the region. The day before, 13 March 2007, local villagers had demonstrated before Nandigram Police Station against any possible police action and warned against application of any force by police.

Reports vary as to whether the protesters were mainly unarmed and peaceful or rather violent. According to some reports, the protesters resisted the entry of the security forces by forming a human shield, composed mainly of women. However, also according to these reports, at least one protester had a homemade bomb which exploded killing him and injuring others near him. Other sources state that at least 2,000 protesters, most of them farmers and opposition activists, ransacked and set fire to a government building (the Block Development Officer's office) at Nandigram and attacked police officers. Several police officers, four according to one report, seven according to another, were injured.

The police charged the protesters with batons and allegedly fired tear gas, rubber bullets and finally live ammunition to disperse them. Many villagers received bullet injuries and some might have been killed by the police firing to disperse them (the information I have received does not allow to establish whether deaths occurred already at this stage or only during the subsequent events).

Reports indicate that after these initial clashes members of the security forces and supporters of the governing CPI(M) entered into the villages, ransacked homes and attacked the population, killing inhabitants and raping women. On 16 March 2006, two rape victims (their names are on record with me) were admitted to the Nandigram Block Primary Health Care Center. Some dead bodies were thrown into the Haldi river by the CPI(M) supporters and the police. I have also received the allegation that injured persons were carried to different destinations in an attempt to cover up the actual number of casualties. Most reports indicate that overall 14 persons were killed, but others state that the number of killed protestors is above 50. One report indicates that 27 bodies have been found on the banks of the river Haldi. I have received a list of 19 persons missing in Nandigram, which I attach to this letter.

The Calcutta High Court has ordered the Central Bureau of Investigation (CBI) to carry out an investigation into the events and a CBI team is reported to be at work in Nandigram, interviewing witnesses and collecting physical evidence. On the other hand, I have received the allegation that CPI(M) cadres are preventing journalists and other persons from entering Nandigram and harassing anyone who attempts to enter the area.

Protests over the events in Nandigram have reportedly sparked demonstrations and violent clashes between the police and protestors also in other parts of West Bengal, particularly in the capital Calcutta.

As noted above, the reports I have received concerning the events in Nandigram since 13 March 2007 do not, at this stage, allow me to have a clear picture of the developments leading to the killing of at least 14 civilians. Nonetheless, I consider it appropriate to bring to your Government's attention the principles governing the lethal use of force in the dispersal of protests under international law.

Article 6 of the International Covenant on Civil and Political Rights, to which India is a party, provides that no one shall be arbitrarily deprived of his or her life. Article 3 of the *Code of Conduct for Law Enforcement Officials* (General Assembly resolution 34/169 of 17 December 1979) and principle 9 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in themselves binding law, provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces facing allegedly violent crowds:

Article 3 states "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." It thus sets forth the twin safeguards of necessity and proportionality in the use of force.

Principle 9 reads: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." (emphasis added)

I urgently appeal to your Excellency's Government to ensure that any ongoing operations by the security forces in Nandigram, in Calcutta or in other parts of West Bengal conform to these principles. I also urge your Government to take all necessary steps to prevent supporters of the CPI(M) from any further violence against the population of Nandigram.

In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement and necessary, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st session of the Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions".

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

1. Are the allegations in the above summary of the events accurate?
2. What were the instructions given to the security forces before and during the operation in Nandigram? How did the security forces ensure compliance with the requirements of necessity and proportionality? What steps were taken to prevent and stop exactions against the population by supporters of the CPI(M)?
3. Please provide the details, and where available the results, of the CBI investigation, and judicial or other inquiries carried out in relation to this case.
4. Will those injured by the security forces and the family members of those killed be compensated?

India: The Armed Forces (Special Powers) Act (AFSPA)

Violation alleged: Attacks or killings by security forces; Impunity

Subject(s) of appeal: At least 25 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 14 August 2007

This letter is pursuant to my communication to your Excellency's Government dated 24 August, 2005 concerning the Armed Forces (Special Powers) Act, 1958 (AFSPA), a law reportedly applicable in "disturbed areas", including large parts of the Northeast region of India as well as in Jammu and Kashmir, where a variant of the Act was reportedly brought into force in 1990.

Concern has been expressed that the Act violates non-derogable provisions of international human rights law and has facilitated the perpetration of grave human rights violations including extrajudicial executions by granting extensive powers to the armed forces in areas where it is in force. Concern is heightened by reports that the Act has also enabled impunity for alleged perpetrators.

It is my understanding that a large number of armed groups who operate in the areas where the Act is in force are responsible for gross human rights abuses, including torture, hostage taking, extortion and killings of civilians. I recognize that it is the

duty of the State to protect their citizens against such acts. However, any such measures must be undertaken within a legal framework which is consistent with applicable international human rights as well as humanitarian law norms.

More specifically, concern has been expressed that the AFSPA empowers security forces not only to arrest and enter property without warrant but also gives them power to shoot to kill in circumstances where members of the security forces are not necessarily at imminent risk. This conclusion seems to follow from Section 4 (a), (c) and (d) of the AFSPA.

In this connection, I would like to refer Your Excellency's Government to Article 6 of the International Covenant on Civil and Political Rights (ICCPR) which provides that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

Both Article 4(2) of the ICCPR and Principle 8 of the Basic Principles on the Use of Firearms by Law Enforcement Officials provide that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any derogation from the right to life and security of the person. Besides, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Concern has further been expressed that the section 8 of the Act in fact facilitates impunity by preventing any person from starting legal action against any members of the armed forces for anything done under the Act, or purported to be done under the Act, without permission of the Central Government. This would appear to be incompatible with the obligations of the Government under Article 2 (3) of the ICCPR to ensure the provision of an effective remedy in cases involving violations of human rights.

I have reviewed the Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, submitted to the Government of India on 6 June, 2005 which has been available on the internet since 2006. The Government of India established a five member Committee in November 2004 in response to extensive disquiet following the death of Monorama Devi whilst in the custody of Assam Rifles in 2004 and the hunger strike of Irom Sharmila since 2001. The Committee was asked to advise the Government whether to amend the provisions of the Armed Forces (Special Powers) Act or "to replace the Act by a more humane Act". The Committee recommended that "The Armed Forces (Special Powers) Act 1958 should be repealed... The Act is too sketchy, too bald and quite inadequate in several particulars. It is true the Supreme Court has upheld its Constitutional validity but that circumstance is not an endorsement of the desirability or advisability of the Act.... The honorable Court has added certain riders of its own... The Committee is of the opinion that legislative

shape must be given to many of those riders...the Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and high handedness. It is highly desirable and advisable to repeal this Act altogether... The Committee is also of the firm view that it would be more appropriate to recommend insertion of appropriate provisions in the Unlawful Activities (Prevention) Act, 1967 (as amended in the year 2004)'.

I would like to urge your Excellency's Government to consider either repealing the AFSPA in line with the recommendations of the report of the above Committee or ensuring that the Act and any other such future legislative measures comply fully with international human rights and humanitarian law treaties to which India is a state party, especially the ICCPR and the four Geneva Conventions. I note that in December 2006, it was reported that Prime Minister Manmohan Singh declared that the Act would be amended to ensure it was 'humane' on the basis of the Jeevan Reddy Committee's report.

Finally, I should like to take this opportunity to bring to your Government's attention allegations I have recently received and which refer to violations that took place in Manipur and Kashmir. I have included the cases in an annex to this communication.

While I do not wish to prejudge the accuracy of these allegations, it is my responsibility under the mandate provided to me by the Human Rights Council and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission I would be grateful for your cooperation and your observations on the following five matters:

1. Are the facts alleged in the summary of the cases below accurate relating to the killing of 24 individuals? If not, in order to refute these allegations, please provide details of any inquiries carried out, including any autopsies performed.
2. If a complaint has been lodged, what action has been taken in response?
3. Please provide the details, and where available the results, of any investigation, or judicial or other form of inquiry carried out in relation to this case.
4. Please provide the full details of any prosecutions which have been undertaken.
5. Please indicate whether compensation has been provided to the families of the victims.
6. Please confirm whether it is still the Government's intention to amend the AFSPA in line with the Prime Minister's above mentioned remarks, and if so what amendments to the Act are envisaged
7. Please also reply to my letter of 24 August, 2005 outlining the cases of 36 persons who were killed in Manipur and Kashmir.

ANNEX

MANIPUR

It was reported that on 11 January 2006 officers from the 24th Battalion of Assam Rifles dressed in civilian clothing shot dead Jangkhotinmang Haokip, aged 27. Soldiers were said to have driven a red van without registration plates into Chavangphai village of Morah Ward 7. It is understood that some villagers stopped the van and identified those inside but ran away in fear after having realised they were from the Assam 24 rifles. Another group of villagers sitting beside a fire in the courtyard of a house rushed inside and soldiers from the Assam Rifles followed after the latter. It is understood that Jangkhotinmang Haokip, was shot at point blank range and died on the way to hospital. An agreement was apparently signed on 14 January, 2006 between the Tribal community and the Assam Rifles according to which the Assam Rifles admitted that the shooting was a case of mistaken identity and it was agreed that the Assam Rifles would pay compensation to the surviving children of the deceased and employ his widow as a water porter.

It was reported on the afternoon of 30 January 2006 Leitanthem Premanda was taken away by Manipur police Commandos in a bullet proof jeep, from Sangshabi (Yaral Hill). On the same day on a local TV channel, IS TV reported that an unknown person was killed in an encounter at Maning Sabal Leikai. On 31 January, 2006 family members went to a morgue at RIMS hospital and identified the body of Premanda. It is reported that the mother of the victim lodged a complaint with the police at Imphal Police Station but the police refused to register the case.

On 25 February, 2006, Abdul Hakim was shot dead by the Imphal West police commando team, at Paona Bazar Masjid Road, Imphal after he was according to the police walking in a suspicious manner. The police reportedly claimed that the victim was told to stop but he instead ran away and tried to open fire at the police. The police reported that they found inter alia a pistol with live rounds and a grenade in his possession but it was alleged that the police placed the above items besides him only after shooting him dead. It was reported that a request made by the Joint Action Committee to constitute a judicial enquiry into the killing of Abdul Hakim has been rejected by the Government.

It was reported that during the early hours of 4 April 2006, police commandos and 7th Battalion of Assam Rifles shot dead Hemam Naocha. He was initially arrested during celebrations of the annual Laiharaoba along with two others and beaten up at Leitankokpi market, thereafter taken away in a police vehicle. The following morning information was received that two dead bodies were found at Saiton Lamthapung, those of Naocha and that of a suspected PLA cadre.

It was reported that on 24- 25 April 2006 Trisul, Thingujam Chnancal Kumar, Laishram Santosh Singh and Lukman Shah were shot dead by the 32nd Battalion of Assam Rifles. The four were seen driving towards Nungei Chingtham Khongbal and according to witnesses were stopped by a patrol party of 32 Assam Rifles about 10pm on 24 April, which shot at the tyres of their vehicle. They were reportedly interrogated, beaten and gun shots were heard thereafter. The following morning bullet ridden bodies of the above four were found in the Nungei area.

On 8 May 2006, Ningthoujam Shyamkanhai and Khumdrakpak Ranjit were identified by their families at a morgue in Churachandpur. Both left their homes on the morning of 8 May for Churachandpur in order to work. Their families had earlier received a phone call that both were at the police station there, but on going there they were directed to the morgue. The Assam rifles reportedly claimed that a van carrying the two victims failed to stop when asked to do so by troops and instead the co-driver opened fire after which troops opened fire killing the two. It is reported that although the Government has reportedly agreed to hold a high level police enquiry into the incident, no prosecution has resulted.

On 9 May 2006, Ms Chiireiwon Shithungdang was reportedly shot dead by the police. The police apparently stated that at around 4.30pm a team of Bishnapur police Commandos conducted a search operation, at Loktak lake and that the police fired at some militants making a bid to escape, as the police team approached them. The police subsequently found the body of Ms Shithungdang together with the body of an injured man. The militant organization alleged to be involved, the Kanglei Yawol Kanna Lup organization denied having an exchange with the police and also denied that the above was a member of their organization. It was reported that an enquiry was launched headed by the DIG (R-III) but that the results of the enquiry have not been made public.

On 12 July 2006, Thoudam Jilangamba and Soibam Oprendo were reportedly shot dead by the 4th Assam Rifles at Chumbrei-thong, Mantripukhri. It is understood that they were seen in the afternoon walking towards Mantripukhri along National Highway number 39 with a soldier from the Assam Rifles. On entering Chumbrei-thong area they were seen entering a rented house, thereafter dragged out and shot at point blank range. On the same day however, the military released a press release claiming that two cadres of the United National Liberation Front were killed by 4th Battalion of Assam Rifles during an encounter.

On 26 July 2006, Paomilen Touthang and Lhunlal Haokip were reportedly shot dead by members of the Commando Unit attached to Imphal West Police Station. They were overpowered by plain clothes officers, taken away and subsequently shot. It is understood however that police have alleged that they were shot in the course of an armed encounter.

It was reported that on 20th August 2006, Mr Thongkhlanlain Paite was shot by the 3 Rajputana Rifles of the Indian Army. It is understood that he was the steward of the Evangelical Baptist Convention church, Churachadpur on the day and was sitting on the church veranda. Some shots were heard around 7.30am. Two army bullet proof vehicles together with a private van used by the army reportedly stopped in front of the church and opened fire in the direction of the church. Aside from Mr Paite, three others were shot, two persons were hit by bullets in the back, one in the right hand.

It was reported that on 31 August 2006, Mr Longjam Surjit was shot dead by members of the 22nd Battalion Maratha Light Infantry. At the time he was apparently walking from his home with a friend at night time to search for a missing horse. Gunfire was reported to have erupted, and Mr Surgit's body was found the following morning at Thounaojam Khun Mamang Nambul Mapal. It is understood that a District Magistrate was appointed to conduct an enquiry into the above events.

It was reported that on 8 February 2007, Henpu Singsit was shot dead by soldiers from the 32 Assam Rifles and two others were seriously injured. It is understood that gun shots were heard from a distance and later that day two officers from Assam Rifles entered the church compound in Khoken village where the deceased and others were working and opened fire. Mr Singpit died on the way to hospital. It is understood that Assam Rifles denied being involved stating that the acts concerned were perpetrated by militants.

It was reported that on 6 April 2007, Sapan Brojen Singh, Taorem Boba and Thangkhenmung Hangzo were shot dead by the Rapid Action Force of Manipur State Police. It is understood that the three were riding a scooter but on approaching Kwakeithel market failed to stop where the Rapid Action Force were checking vehicles and drivers. It is reported that police shot at the scooter killing Taorem, after which Thangkhenmung who had been driving the scooter lost his balance and fell to the ground with Sapan. The police searched Thangkhenmung, and Sapan forcing them to undress and lie face down on the road and thereafter shot them dead.

It is reported that on about 12 April 2007, officers from the 34 Battalion of Assam Rifles killed Mr Thouba and Mr Arumkunar. It is understood that the above named left home around 7.30pm on 30 March, 2007 to participate in a folk dance associated with the festival of Holi at Wangjing Lamding. Three trucks of the Assam Rifles were parked nearby at Pukhri Achouba Mapal and soldiers were searching individuals and at the same time it is understood that two border security Force camps were situated within a 1km of Wangjing Lamding. It is alleged that the two victims were taken away by heavily armed abductors speaking Hindi in an Tata sumo without licence plates. It was reported that the bodies of the above two were discovered on 12 April, 2007 at Mongpijang village. Autopsies conducted on the bodies of the two apparently revealed that the victims had been tortured.

KASHMIR

In February 2007, Nazir Ahmed Dekar a Pakistani street vendor, disappeared from outside a school in Srinagar. It is understood that security forces alleged he was a member of the militant Group, Lahkar-e-Toiba and that he was killed during an alleged encounter. It was reported that his body was exhumed for the purposes of DNA testing in February. It was reported that on 1 February 2007, Deputy Inspector General of Police, Farooq Ahmed Bhat stated police were probing four cases of staged encounters during which civilians had been killed.

India: Death in Custody of Raju Roy s/o Mr. Badal Roy

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 1 February 2008 sent with the Special Rapporteur on the question of torture

We would like to bring to your Government's attention information we have received in relation to Raju Roy s/o Mr. Badal Roy, aged about 35.

According to the information received:

He was arrested on 11 December 2007 by plain-clothes personnel of the Railway Protection Force in Santragachi, Howrah. At the time of arrest the officers did not present an arrest warrant, or inform the family.

On the next day Mr Raju Roy's family was informed that he was seriously ill and had been sent to the Howrah District Correctional Centre. When they went to visit him there, Mr Raju Roy was unable to speak, to stand on his feet and to walk presumably as a result of the treatment he had been subjected to while in the custody of the Railway Protection Force.

On 14 December 2007 Mr Raju Roy died after having been transferred to the Medical College & Hospital, Kolkata. The official notification of the death indicates that he passed away at 1.35 a.m.

On 17 December 2007 representatives of the Correctional Home of Howrah asked the widow to sign a letter indicating that he had been unwell before his detention and that his death was not related to his detention, but she refused.

On 19 December 2007 the body with injuries and marks that might stem from torture or ill-treatment was handed over to Mr Raju Roy's family. The autopsy was conducted by a magistrate under the authority of the executive branch, who was not independent from the Railway Protection Force, and therefore lacks credibility.

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

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

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

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

We understand that an autopsy on the body of Mr. Uripno has been conducted and that the CID has started a preliminary investigation. We urge your Excellency’s Government to complete the inquiry into the circumstances surrounding the death of Mr. Uripno expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate Mr. Uripno’s family.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details on any developments in the investigation of the case. If it has been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken against the officers allegedly responsible for Mr. Raju Roy’s death. Have penal, disciplinary or administrative sanctions been imposed on them?
4. Please indicate whether compensation has been paid to the family of Mr. Raju Roy.

Indonesia: Deaths in Custody of Suherman and Marsudi Tri Wijaya

Violation alleged: Death in custody

Subject(s) of appeal: 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Indonesia with respect to the death of Mr. Suherman and Mr. Tri Wijaya, however the SR would appreciate receiving more detailed information on the results of the autopsies that were conducted.

Allegation letter dated 28 June 2007

I would like to bring to your Government's attention information I have received concerning the death of two men, Mr. Suherman and Mr. Marsudi Tri Wijaya, who were both last seen alive in the custody of men asserting to be police officers in Medan, Northern Sumatra.

According to the information I have received:

On 11 April 2007, at around 3:30 a.m., around 30 men claiming to be Medan District Police officers entered the home of Ms. Supiah (the sister of Mr. Suherman), demanding to see Mr. Suherman. They forced Ms. Supiah to take them to her brother's home. There they arrested Mr. Suherman, his wife Juliana and their children without showing an arrest warrant. It is also alleged that the search resulted in the confiscation of valuable possessions.

Juliana and the children were taken to the Medan Sub-District Police Station where they were interrogated by the Police. Mr. Suherman was taken away in a different direction to an unknown location. At around 6 a.m. the same day, his wife was informed that her husband's dead body had been found. Autopsy reports later showed that Mr. Suherman had been shot in the chest. He also suffered bullet wounds to the left side of the navel and to the hip. At around 6 p.m. the same day, Juliana was allowed to see her late husband's body at the Bhayangkara Hospital. At the Hospital she was also approached by a police officer who gave her an envelope containing 500,000 Rupiah "compensation". Mr. Suherman was buried at 8:30 p.m. that same day.

According to further reports, briefly after the ostensible police operation at Mr. Suherman's home, at around 5:00 a.m. of 11 April 2007, five men claiming to be Medan District Police Officers entered the home of Mr. Marsudi Tri Wijaya in Medan. The men woke Mr. Wijaya up, beat him and abused him verbally in front of his family. One of the purported police officers began to strangle Mr. Wijaya and repeatedly asked him where he kept his "book deposit" and "book account" and a gun, which he denied possessing. He was then allegedly

handcuffed and taken away by two of the men. The remaining three men searched Mr. Wijaya's home and allegedly confiscated valuable possessions.

At around 2:00 p.m. on the same day, members of Mr. Wijaya's family were reportedly informed that his lifeless body had been found by a villager and been taken to Bhayangkara Hospital. Mr. Mardi Wijaya, a brother of the victim, went to identify the body as that of Marsudi Tri Wijaya. There were two bullet wounds in the chest and severe bruises on the back of his neck, possibly the result of a sharp blow with a blunt instrument. The corpse was brought back home on 12 April 2007.

On 16 April 2007, Mr. Wijaya's family reported the matter to the North Sumatra Regional Police, Criminal Investigation Division, which requested the Medan hospital to carry out an autopsy but allegedly did not take any further action. Subsequently, Mr. Wijaya's family reported the incident also to the National Central Police in Jakarta.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw your Government's attention to the fundamental principles applicable under international law to this case. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his life. International law further requires from your Government a "thorough, prompt and impartial investigation" into all cases of custodial death (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). When an individual dies in State custody, there is a presumption of State responsibility.

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

1. Are the facts alleged in the above summaries of the two cases accurate? Were the persons who detained Mr. Suherman and Mr. Wijaya police officers?
2. Please provide information on all inquiries, administrative and judicial, carried out with regard to the detention and death of Mr. Suherman and Mr. Wijaya.
3. Have any disciplinary proceedings been undertaken in relation to the death of Mr. Suherman and Mr. Wijaya?
4. Have any criminal prosecutions been undertaken in relation to the death of Mr. Suherman and Mr. Wijaya?
5. Have the families of Mr. Suherman and Mr. Wijaya been compensated?

Response from the Government of Indonesia dated 31 July 2007

With regard to the allegations made concerning the above-mentioned men, Indonesia would like to bring to your attention that according to the information that has been made available/established, Mr Suheman and Mr Wijaya were both allegedly roused from sleep in their respective homes by police officers who demanded documents and money. With regard to Mr Suherman, it was asserted that he was arrested without a warrant after 30 men showed up at his home, arrested him and it is assumed, took him to the Medan Sub-District Police station in Northern Sumatra where they questioned him but not before confiscating several items from his home.

We note also that complaints by the family were voiced and that they reported the incident to the Criminal Investigation Department of the North Sumatra Regional Police on 16th of April 2007. The Police requested that an autopsy be carried out and they are waiting to determine the facts based on these findings. Furthermore, the families also later reported the incident to the Komnas HAM (National Human Rights Commission) and the National Central Police in Jakarta which had superseding authority over the North Sumatra office. It is our understanding that they are awaiting the conclusions reached by both. In the meantime, the other local authorities will continue to investigate the case in order to determine the best measures imposable, when they find the perpetrators.

Indonesia takes this occasion to again reiterate again its opposition to the use of coercion or torture. It is accepted national law and practice that the right to be free from torture is a non-derogable right which is guaranteed by the 1945 Constitution and its amendments. The Constitution guarantees the right of every person to be free from torture or inhumane and degrading treatment (Article 28 G (2) and Art. 28 L (1)). Similar protection exists in the provisions of national and international human rights law and in the Indonesian penal code.

While there might be challenges to these policies which are indeed a common occurrence even in most democratic countries, the willingness and commitment of Indonesia to adhere with them remains undiminished and national legal measures are geared towards the achievement of this goal. Therefore, the government cannot accept that the actions of a few rogue elements in the protection forces impede the progress that has been made thus far, thereby casting into doubt this very commitment without taking into adequate consideration the work which is ongoing.

Indeed, Indonesia as a signatory of the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (CAT), and the International Covenant of Civil and Political Rights (ICCPR), considers efforts to promote and protect human rights a national priority as any violations in this regard would be detrimental to the enforcement of law and order.

In national laws, the right to be free from torture has been clearly guaranteed in the provisions whereby according to Article 4 of Law No. 39/1999 on the Human Rights and Articles 9 and 39 of Law No. 26/2000 on the Human Rights Court, any violations of human rights, including torture, will be brought to justice. More specifically, under Law No. 26/2000 torture is defined as a crime against humanity and is accordingly prohibited. Moreover, within the prescriptions of Articles 351, 353, 354 and Articles 421 and 422, any official or person who uses his authority inappropriately will be accordingly punished.

Furthermore, the Government of Indonesia is, and has always been against the use of torture and in does not take lightly any allegations to the contrary. This incident will be thoroughly investigated. The government would however request in the meantime, your indulgence as the national and local investigations continue and intensify their field of research into the exact events that were said to have occurred on the aforementioned dates. If and when the perpetrators of such unconscionable acts are found, they will be brought to justice and their actions severely reprimanded.

Response from the Government of Indonesia dated 28 November 2007

The Government of Indonesia provided supplementary information to support their earlier reply of 31 July 2007.

In effect, the Government of Indonesia is able to confirm the following facts with regard to the allegations that were made accusing and inculcating the police of unwarranted violence. The original reported incident concerning Mr Suherman and Mr Wijaya dates back to several months prior to their arrest by the police.

In April 2007, between 22:00 and 23:00, a Mr Fredi Gultom living on Ketapang Street in Medan was burgled at gunpoint by armed robbers carrying a FN mode/ firearm and a bayonet. Several items including jewellery, cash and two mobile phones were taken. One of the robbers was said to be about 165cm tall and drove a motorcycle. Subsequent police investigations into this armed robbery led them to a mobile phone number which they eventually traced to a suspect living at no. 60 Tangguk Bongkar Satu Street Mandala, Medan. This individual went by the name of Suherman. Following confirmation by Mr Gultom on the description of the perpetrator of the armed robbery, the police decided to go ahead and arrest Mr Suherman.

This arrest was conducted under the supervision of Police Commander Budi Haryanto and the Metropolitan Police. Miss Nunung, as well as being the head of the District XI police was also the sister-in-law of Mr Suherman and was present during thre arrest. Furthermore, eight officers were there to witness this event.

When they arrived at the address, they found Mr Suherman's wife, Mrs Juliana Suherman. The police commandant informed her who they were and showed her the arrest warrant for Mr Suherman. The latter was then handcuffed and arrested by the police officers.

The police searched the house in the presence of Ms. Nunung, and Mr Irwansyah and Mr Ganda Sayuti, both of whom worked for Mr Suherman. They found several items in the house, among which included; a FN model firearm, 250 bullets, two magazines without bullets, an amulet, two motorcycles, a mobile phone and several denominations of foreign exchange (Korean Won, Malaysian Ringgit, US dollars, Thailand Baht and Indonesian Ruppiah). The police suspected these had all been stolen and questioned Mr Suherman to this effect. From this interrogation, the police discovered Mr Suherman worked with an associate named Mr Marsuadi Tri Wijaya who lived in the Percut Sei Tuan district. They thereafter all went with Mr Suherman to Mr Wijaya's house. Upon their arrival there, they knocked on the door and showed

Mr Wijaya the search warrant before they also arrested him as a suspect in the armed robbery committed in April.

Further questioning of the two individuals turned up another suspect called Mr Oden whose house was on Gagak Hitam Street in the Sungaal district. As they claimed they did not know the exact address, the police had to take them with them to look for this third associate. While driving towards Mr Oden's house, the suspects both asked the police for permission to stop the car in order that they might use the bathroom. The car stopped and they got out of the car. They then requested that the police move their handcuffs to the front in order to facilitate their request. As the police started to comply, the suspects reached for the firearms which were at the waist of the police officers. There was a struggle as the police tried to wrestle the guns away from the suspects. During this commotion, shots were fired and the suspects were fatally injured. Immediately, the police officers drove Mr Suherman and Mr Wijaya to the Police Hospital in Medan for medical attention. Unfortunately, both suffered from severe blood loss resulting from the gunshot wounds.

In this regard and in order to ensure a thorough investigation, their bodies were excavated and autopsied on 5 June 2007 by the investigative team and the forensic team from the Pirngadi Public Hospital in Medan. Furthermore, the subsequent pathology investigation report (under reference no. lab: 2503/ktf/vi/2007 on 15 June 2007) backs this analysis and shows that there were no drugs, mercury, pesticide or arsenic in Mr Suherman's body. Furthermore, Mr Wijaya died as a result of the puncture wounds inflicted by the bullets which caused severe blood loss from his vital organs and then death. According to the coroner's post-mortem report, Mr Suherman also died from the bleeding incurred from the gunshot wounds to the chest. As part of the police investigations, the Medan police questioned fifteen individuals, some of whom were relatives of the deceased while nine others were independent witnesses where the suspects died.

Moreover, apart from the crime scene investigation, an independent internal hearing was launched into the actions of the two policemen, namely; Brigadier Ismet and Brigadier Gordon Sigalingging who shot the suspects. The first court hearing was on 22 May 2007 and the second was on 15 June 2007 and included the participation of both members of the law enforcement agencies as well as experts from the medical investigations unit.

On the basis of the abovementioned facts, the police and subsequent legal criminal investigation revealed and corroborated the following facts.

The search undertaken by the police at the house of Mr Suherman was legally carried out. There was no ransacking or unauthorised seizure of property. The search was in accordance with the prescribed laws.

As is the norm, the possessions seized from the house of a suspect are secured and then lodged at the offices of the Directorate of the Detective Crime Unit of the Metropolitan Police Unit in Medan.

Both of the suspects, Mr Suherman and Mr Wijaya died on the way to the hospital in spite of the efforts of the police officers, Brigadiers Ismet and Sigalingging to keep them alive.

There was no intention on the part of the police officers to kill Mr Wijaya or Mr Suherman who they had rushed to the hospital in Bhayangkara, Medan so that they could receive immediate medical treatment.

Therefore, it was determined that the police officers were acting within their boundaries of their official duties and maliciously.

From these facts, it can be inferred that this was an unfortunate incident which tragically led to the death of two criminal suspects. Thus, allegations that the police acted rashly or illicitly are incorrect. The local authorities concerned have since ruled on the case and determined, according to the national laws in Indonesia, whether or not there would be further legal repercussions. It is evident that the police acted legally and the accusations to the contrary are unwarranted and must be dismissed.

Indonesia: Death in Custody of Teguh Uripno

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Indonesia with respect to the case of Teguh Uripno. The SR would request that he be informed of the results of the ongoing investigations and pending criminal proceedings to which the Government's response refers.

Allegation letter dated 28 June 2007 sent with the Special Rapporteur on the question of torture

We would like to bring to the attention of your Excellency's Government information we have received regarding the death in custody of Mr. Teguh Uripno, a man reportedly detained by the Serpong sector police in Tangerang district on 20 April 2007.

According to the information we have received:

On 20 April 2007 around 11 a.m. Teguh Uripno, a 24-year old resident of Tangerang district, was arrested, handcuffed and taken into custody at Serpong police station after a dispute with a police officer. There he was beaten by police officers.

When his family heard of the arrest, they went to the Serpong police station, where they were not allowed to see Mr. Uripno. They returned the following morning, 21 April 2007, and again were not allowed to see him. The police did

not provide specific reasons for the refusal to allow the family to see Mr. Uripno. At around 3.30 p.m. on 21 April several police officers went to the house of Mr. Uripno's family and informed them that he had died while being taken to a local hospital. The family immediately went to the hospital. They found marks of severe beating on the body. Medical reports indicate that he had a fractured skull, his arm was broken, and other parts of his body severely bruised. According to the medical reports, his death was due to the trauma suffered by his skull.

The Criminal Investigation Division (CID) of Tangerang has commenced an investigation into the death. The family of Mr. Uripno filed a complaint with Komnas Ham (National Human Rights Commission). We have not received any information on progress in these proceedings.

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

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

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such

executions". These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We understand that an autopsy on the body of Mr. Uripno has been conducted and that the CID has started a preliminary investigation. We urge your Excellency's Government to complete the inquiry into the circumstances surrounding the death of Mr. Uripno expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate Mr. Uripno's family.

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

1. Are the facts alleged in the above summary of the case, including the findings of the medical report, accurate?
2. Please provide the details on any developments in the CID investigation of the case. If it has been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken against the police officers allegedly responsible for Mr. Uripno's death. Have penal, disciplinary or administrative sanctions been imposed on them?
4. Please provide detailed information on the proceedings following the complaint to the National Human Rights Commission.
5. Please indicate whether compensation has been paid to the family of Mr. Uripno.

Response form the Government of Indonesia dated 31 July 2007

By letter dated 31/07/07, the Government informed that Mr. Uripne was arrested for assaulting a police officer and then taken to Serpong district Sector Police Station. It has been reported that he died on 21 April as he was being taken to hospital allegedly following a beating while in police detention in the Tangerang district the day before. It has been alleged that he was brutally beaten and that this assault proved fatal. It is also the Government's understanding that while he was remanded into police custody on 20 April, his family was informed of his arrest. Investigations are currently ongoing. The facts of the case are being elucidated by the pertinent authorities in charge. For instance the Criminal Investigation Department (CID) of Tangerang has been involved in the case and has undertaken its investigations since April 2007. The findings of the CID will be communicated to the appropriate authorities as soon as their report is established. However, the process of investigating involves a detailed sifting through of all the facts and allegations, a process which requires time and dedicated effort. Mr. Uripno was questioned while in custody, then he was taken to hospital the same day where he died. An autopsy was ordered and it was as a result of

the findings of this report that his parents sought the assistance of the Jakarta Legal Institute and thereafter went to the Jakarta Police to denounce the treatment and subsequent death of their son. In connection to this case, Indonesia is also aware that his family later sent a letter of complaint to the Komnas Ham (Indonesia's National Human Rights Commission) detailing their concerns. The latter commenced investigations, however, as this also requires a bit of time to verify the facts and reliably identify the perpetrators, their conclusions cannot be publicly transmitted until then. In connection to the response of the local authorities, the Internal Affairs department of the Tangerang Police has also been conducting their independent investigation into this matter. This unit originally questioned 19 police officers working in the Serpong district who were at the time suspected of being implicated in this unfortunate death of a detainee. Nine police officers have since been officially named as suspects in the case and have been duly arrested. Of the nine police officers, two were name key suspects in April. The other seven are still being investigated for complicity in the acts of violence perpetuated against the victim, while he was in their custody. However a chain of causality must be clearly established before any final conclusions can be presented. Furthermore the judiciary and its branches must be allowed the time and space to effectively carry out their functions and come to a concrete solution of the issue before them without interference from the Executive, as clearly stipulated in the 1945 Constitution. The Government reiterates, as it has done on many other similar occasions, its opposition to the use of torture, whether as a means of coercion or punishment. As well as being a signatory to CAT, Indonesia has also provisions in its laws that clearly state that freedom from torture is a non-derogable right. Indeed, this is evident in the provisions of Law No. 39 of 1999 on Human Rights, in particular article 4, as well as articles 9 and 39 of Law No. 26 of 2000 on the Human Rights Court. The latter guarantees any violations of this right will be brought to justice. Moreover, Indonesia continues to do its best to assure the dissemination of information on the implementation and application of CAT and other such provisions within the national security services in order that incidents and tragedies such as those concerning Mr. Uripino do not occur. It is the Government's belief that its local government authority will do everything within its prescribed authority to verify the facts of the case and determine the perpetrators and how they should be prosecuted before the law and whether it will be disciplinary, administrative or penal measures that will be undertaken. The provisions of national law however preclude the interference of the Government from matters that have been constitutionally set to be handled by the judiciary. Furthermore, any considerations for compensation depend entirely on the findings of the courts and subsequent rulings thereof. Until the ruling of the court establishes the chain of events and causality, the right punishment for the perpetrators and the possibility of compensation cannot be anything more than an expectation. The Government further wishes to clarify again that the judiciary can only allow for the stipulation of compensation when the facts of the case determine such would be warranted and not before. However, this decision again lives exclusively within the powers of the judiciary which excludes any interference by the executive.

Islamic republic of Iran: Death Sentence of Hossein Gharabaghloo

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 5 January 2007

I would like to bring to the attention of your Excellency's Government the situation of Mr. **Hossein Gharabaghloo**, who is reportedly at imminent risk of execution for a homicide committed when he was aged 16. According to the information I have received:

Hossein Gharabaghloo killed another young man during a fight on 1 December 2004. He was arrested and taken to a juvenile detention centre, the Tehran Centre of Correction and Rehabilitation (Kanoun-e eslah va tarbiyat), but escaped before his trial. He was re-captured and on 1 November 2006 was tried by Branch 71 of Tehran Criminal Court, and sentenced to death. This sentence has been upheld by Branch 31 of the Supreme Court on 13 December 2006.

As your Excellency is aware of, this is not the first case of juvenile offender being sentenced to death and/or facing imminent execution I have received regarding Islamic republic of Iran. While I do not wish to prejudge the accuracy of the allegations regarding this specific case, I would like to draw your attention once again to the fact that the execution of Hossein Gharabaghloo and any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

In this connection, I would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has

been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

According to information I have received, the Bill on Juvenile Courts was indeed passed by the Majles (Parliament), though only during the summer of 2006, but is still awaiting approval from the Guardian Council and has thus not yet entered into force.

I would respectfully reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary measures to comply with international human rights law and to prevent executions of offenders who were under the age of 18 at the time of the offense. This includes, most urgently, the suspension of the execution of Hossein Gharabaghloo.

It is my responsibility under the mandate provided to me by the Commission on Human Rights, reinforced by the appropriate resolutions of the General Assembly and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy.
2. What is the status of the Bill on Juvenile Courts? What will that law, once it enters into force, provide with regard to capital punishment for juvenile offenders?
3. Finally, I would respectfully reiterate my requests for a comprehensive and detailed indication of the details of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court.

Islamic Republic of Iran: Death Sentence of Abdullah Farivar Moqaddam

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 31 January 2007 sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Excellency's Government to the case of **Abdullah Farivar Moqaddam**, an Iranian citizen who is at imminent risk of execution by stoning to death. According to the information received:

He was arrested on 8 February 2005 and charged with committing adultery. He was convicted and sentenced to death on 21 December 2005 by the second bureau of the Mazandaran penal court and the sentence was confirmed by Bureau 41 of the High Court on 1 August 2006. He apparently confessed under fear of torture by the police but later retracted his confession before the Court. His application to have the verdict quashed by the Head of the Judiciary and Investigation Board of the High Court was subsequently dismissed. It is believed that Mr. Moqaddam is currently detained at Sari Prison in Iran.

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences.

It has long been understood that, as the first Special Rapporteur on extrajudicial, summary or arbitrary executions stated in 1985, the Safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the Economic and Social Council would "serve as criteria for ascertaining whether an execution is of a summary or arbitrary nature" (E/CN.4/1985/17, para. 24). These safeguards provide that "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences." It is our view that the death penalty as applied in this case does not fall within the category of the "most serious crimes" for which international law countenances its possible application. In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty "for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life" (CCPR/C/28/Add.15, 3 August 2003, paragraph 8).

We would also like to draw your Government's attention to Resolution 2005/39 of the Commission on Human Rights, which reminded Governments that corporal punishment, can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including

the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

It is our responsibility under the mandates provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Without in any way wishing to pre-judge the accuracy of the information received, we would be grateful for a reply to the following questions:

1. Are the facts alleged in the above summary accurate?
2. Please provide details of any avenues of appeal already exercised by the defendant and those still open to him to challenge his conviction and sentence.
3. As per the letter of the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 22nd October, 2006 please provide statistics as to the number of persons sentenced to death and the number executed in the past three years for the offence of adultery.

Islamic Republic of Iran: Death Sentences of Sina Paymard and Mostafa

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 31 January 2007 sent with the Special Rapporteur on the Question of Torture

In this connection, we would like to draw the attention of your Government to information we have received regarding **Sina Paymard** and **Mostafa** (surname unknown) who are reportedly at risk of execution for homicides committed when they were under the age of age 18. According to the information we have received:

Sina Paymard was convicted of murder after a dispute with a man over cannabis during which he stabbed the drug dealer to death in October 2004. The Supreme Court upheld his death sentence but he was granted a reprieve by the victim's family on 20 September, 2006. Sina Paymard remains at risk of execution after a demand for payment of diyeh (blood money) was made in the amount of 150 million troumans (over \$ 160 000) which Sina Paymard's family could not afford. In November 2006, his lawyer asked for a review of his case after submitting evidence that the Court had not properly considered that Sina Paymard suffered from a mental disorder. He has reportedly had a stay of execution ordered by the Head of the Judiciary.

Mostafa was convicted of killing a man in the Pars District of Tehran following a scuffle which ensued after he intervened to stop the victim harassing a woman. His sentence has been upheld by the Supreme Court.

As your Excellency is aware this is not the first case of juvenile offenders being sentenced to death and/or facing imminent execution we have received regarding Iran. While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that the executions of Sina Paymard and Mostafa and any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

According to information we have received, the Bill on Juvenile Courts was indeed passed by the Majles (Parliament), though only during the summer of 2006, but is still awaiting approval from the Guardian Council and has thus not yet entered into force.

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary measures to comply with international human rights law and to prevent executions of offenders who were under the age of 18 at the time of the offense. This includes, most urgently, the suspension of the execution of Mostafa and the continued suspension of the execution of Sina Paymard, pending a review of his conviction and sentence.

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

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy. In particular, please provide further information regarding the case of Mostafa above.
2. We also recall the letter of the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 5 January 2007, seeking confirmation of the current status of the Bill on Juvenile Courts. What will that law, once it enters into force, provide with regard to capital punishment for juvenile offenders?
3. Finally, we would respectfully reiterate my requests for a comprehensive and detailed indication of the details of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court.

Islamic Republic of Iran: Death Sentence of Reza Alinejad

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Allegation letter dated 13 March 2007

I would like to draw the attention of your Government to information I have received regarding Mr. **Reza Alinejad** who is reportedly at risk of execution for a homicide

committed when he was under the age of 18. According to the information I have received:

On 26 December 2002, when he was aged 17, Reza Alinejad killed a man named Esmail Daroudi in Fasa, a city near Shiraz. Reza Alinejad was sentenced to qesas – retribution – for murder by Branch 6 of the Provincial Court in Fasa on 4 October 2003. In December 2004, the Supreme Court quashed the death sentence and sent the case back to another court for renewed retrial. On 15 June 2005, Branch 101 of the Provincial Court in Fasa sentenced Reza Alinejad to death. This judgment and sentence were upheld by the Supreme Court on 9 May 2006. Reza Alinejad has been detained in Adelabad prison in Shiraz since his arrest. His death sentence could be carried out at any time.

As your Excellency is aware, this is not the first case of juvenile offenders being sentenced to death and/or facing imminent execution I have received regarding Iran. Indeed, during the first two months of the current year 2007 I have brought to your attention the cases of Hossein Gharabaghloo (communication of 5 January 2007) and Sina Paymard and Mostafa (surname unknown) (communication of 31 January 2007), which remain unanswered as of today. While I do not wish to prejudge the accuracy of the allegations regarding the present case, I would like to draw your attention once again to the fact that the execution of Reza Alinejad and any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

As in my previous communications relating to the imposition of the death penalty against minors, I would also remind your Excellency of the discussion of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

According to information I have received, the Bill on Juvenile Courts was indeed passed by the Majles (Parliament), though only during the summer of 2006, but is still awaiting approval from the Guardian Council and has thus not yet entered into force.

I would respectfully reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary measures to comply with international human rights law and to prevent executions of offenders who were under the age of 18 at the time of the offense. This includes, most urgently, the suspension of the execution of Reza Alinejad, pending a review of his sentence.

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

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy.
2. I also recall my communications dated 5 January 2007 and 31 January 2007 (mentioned above), seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?
3. Finally, I would respectfully reiterate my requests for a comprehensive and detailed indication of the details of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court.

Islamic Republic of Iran: Death Sentences of Seven Men in Connection with Attacks Linked to Jondallah

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 7 males (including 1 juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent Appeal dated 3 April 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Excellency's Government to information we have received regarding the possibly imminent execution of seven members of the Baluchi minority, one of them a minor. According to the reports received:

Messrs. **Javad Naroui, Ma'soud Nosrat Zahi, Houshang Shahnavazi, Yahya Sohrab Zahi, Ali Reza Brahoui, Abdalbek Kahra Zahi** (also known

as Abdalmalek), and **Sa'id Qanbar Zahi**, who is aged 17, have been tried, convicted and sentenced to death in connection with a series of crimes which took place in the town of Tasuki, in Sistan and Baluchistan province in March 2006. These crimes are attributed to an armed Baluchi opposition group, Jondallah, also known as the Iranian Peoples' Resistance Movement (Jonbesh-e Moqavemat-e Mardom-e Iran), and reportedly include lethal attacks on civil servants and security forces, abductions, and seizure of governmental arms depots. Jondallah is also said to be responsible for the attack on a bus carrying Revolutionary Guard members on 14 February 2007, in which at least 14 persons were killed.

According to the reports received, five of the men (Ali Reza Brahoui, Yahya Sohrab Zahi, Sa'id Qanbar Zahi, Houshang Shahnavaizi and Ma'soud Nosrat Zahi) made confessions broadcast by Iranian state television to a number of the above crimes, linking them to Jondallah. The reports received also indicate that these five men might have been tortured, including by having bones in their hands and feet broken, by being "branded" with a red-hot iron and by an electric drill applied to their limbs.

We do not wish to prejudge the accuracy of the reports received. We are also fully aware of the serious nature of the crimes these seven men appear to have been found guilty of. We would, however, respectfully remind your Excellency that in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights admits of no exception. Relevant to the cases at issue, these guarantees include the right to a fair and public hearing and the right not to be compelled to confess guilt.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The circumstance that the broadcasting of the confessions of five of the men on state television would appear to be the only element of the case against Javad Naroui, Ma'soud Nosrat Zahi, Houshang Shahnavaizi, Yahya Sohrab Zahi, Ali Reza Brahoui, Abdalbek Kahra Zahi, and Sa'id Qanbar Zahi not shrouded in secrecy reinforces our concerns that they might have been subjected to torture to extort confessions.

With regard to the case of Sa'id Qanbar Zahi, we remind your Excellency's Government that executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran. Article 37(a) of the Convention on the Rights of the Child expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights

provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Javad Naroui, Ma'soud Nosrat Zahi, Houshang Shahnavaizi, Yahya Sohrab Zahi, Ali Reza Brahoui, Abdalbek Kahra Zahi, and Sa'id Qanbar Zahi are respected. This can only mean setting aside of the death sentence imposed against Sa'id Qanbar Zahi and suspension of the capital punishment against the other six men until the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting them to torture is ensured.

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

1. Are the above reports accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the charges against Javad Naroui, Ma'soud Nosrat Zahi, Houshang Shahnavaizi, Yahya Sohrab Zahi, Ali Reza Brahoui, Abdalbek Kahra Zahi, and Sa'id Qanbar Zahi, their trial (including access to legal counsel, public nature of hearings and judgments), and their conviction and sentence.
3. Please provide details concerning the remedies against the execution of the death sentences exercised by the defendants and those still available.
4. Please provide details regarding the steps undertaken to investigate the reports of torture and any proceedings initiated against persons suspected of having tortured the seven men.

Islamic Republic of Iran: Death Sentence of Delara Darabi

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 female (juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent Appeal dated 4 April 2007

I would like to draw the attention of your Excellency's Government to information I have received regarding the case of Ms. **Delara Darabi**, who is reportedly again at risk of execution for a crime she allegedly committed when she was under the age of age 18. I wrote to your Government regarding this case on 9 January 2006, recalling that the death sentence imposed on offenders who were minors at the time of the crime is prohibited by international law and requesting your Excellency's Government to suspend the execution in order to review the case.

I therefore greatly appreciated your Government's communication of 17 January 2006, informing me that "according to information received from the Judiciary of the Islamic Republic of Iran legal counsels of Ms. Darabi appealed to the Supreme Court and raised the issue of her age at the time of the crime. On this basis the Supreme Court has overturned the sentence and has referred it to the Juvenile Legal Center for due consideration. Therefore the sentence has been put on hold."

According to the information received since then, however, following two hearings in January 2006 and on 15 June 2006, Ms. Darabi was again sentenced to death. On 16 January 2007, Branch 33 of the Supreme Court reportedly upheld the renewed death sentence. Her lawyer was allegedly not immediately informed of the Supreme Court decision, but lodged an appeal at the beginning of March 2007.

While I do not wish to prejudge the accuracy of the reports I have received, which are indeed difficult to comprehend in the light of your Government's communication of 17 January 2006, I request your Government to take all necessary steps to halt the execution and set the death sentence aside.

It is, moreover, my responsibility under the mandate provided to me by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to my attention, and particularly to follow up on developments in cases previously raised. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy.
2. Did Ms. Darabi's retrial take place before the Special Court for Children or the General Court in Rasht? How was the question of her age at the time of the offence dealt with in the course of the retrial? How was the question of her age dealt with by the Supreme Court in January 2007? Was the death sentence confirmed despite her age at the time of the offence or on the basis of a different finding regarding her age? If the latter is the case, please submit all relevant documents regarding Ms. Darabi's age.
3. What remedies remain open to Ms. Darabi against the death sentence imposed on her?

I undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Finally, I would like to add a humanitarian appeal to the legal questions raised above. In January 2007, Ms. Darabi reportedly tried to commit suicide in Rasht Prison after her request to be moved to less harsh conditions in another prison failed. Her life was reportedly saved by her cellmates, who alerted the prison authorities, and her family was allowed to visit her in mid-March. It would further appear that Ms. Darabi suffers from a pre-existing kidney complaint, which has worsened in detention. On this basis, I would appeal to your Excellency's Government to ensure that Ms. Darabi is provided with adequate medical care, psychological support and visits from her family while the proceedings in her case remain pending.

Urgent appeal dated 4 May 2007

I would like to draw the attention of your Excellency's Government to recent information I have received regarding the case of **Ms. Delara Darabi**. I raised my concern regarding reports that Ms. Darabi was again at risk of execution for a crime she allegedly committed when she was under the age of age 18 in an urgent communication to your Government a month ago, on 4 April 2007. I attach a copy of that communication for your ease of reference. In the meantime, while I have not received a reply from your Excellency's Government, further reports indicate that another step towards her execution has been taken.

According to the information received:

In April 2007 Branch 7 of the Supreme Court, sitting as a sentencing review body (Sho' be-ye tashkhis), confirmed the death sentence. Thereafter, the sentence has reportedly been sent to the office of the Head of the Judiciary for consideration.

While I do not wish to prejudge the accuracy of the reports received, I reiterate my request to your Government to take all necessary steps to halt the execution and set the death sentence aside. I would also like to reiterate the questions posed in my communication to your Government of 4 April 2007 and seek your urgent cooperation in this respect:

1. Are the facts alleged above and in the communication of 4 April 2007 accurate? If not so, please share all information and documents proving their inaccuracy.
2. Did Ms. Darabi's retrial take place before the Special Court for Children or the General Court in Rasht? How was the question of her age at the time of the offence dealt with in the course of the retrial? How was the question of her age dealt with by the Supreme Court Branch 33 in January 2007 and Branch 7 in April 2007? Was the death sentence confirmed despite her age at the time of the offence or on the basis of a different finding regarding her age? If the latter is the case, please submit all relevant documents regarding Ms. Darabi's age.

3. What remedies remain open to Ms. Darabi against the death sentence imposed on her?

Islamic Republic of Iran: Death Sentences of Khaled Hardani, Shahram and Farhang Pour Mansouri

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 3 males (1 juvenile offender)

Character of reply: Largely satisfactory response.

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran and welcomes the information that the death sentences of Khaled Hardani and Shahram and Farhang Pour Mansour have been commuted to life imprisonment.

Urgent appeal dated 11 June 2007

I would like to refer to my urgent communication to your Excellency's Government of 13 March 2006, concerning the cases of Khaled Hardani and his two brothers-in-law Shahram and Farhang Pour Mansouri, who had been sentenced to death for an unsuccessful attempt at hijacking an aircraft in January 2001. Reports indicate that at the time of hijacking, Shahram Pour Mansouri was aged 17. Your Government has not replied to my communication, and I have now received information that Mr. Hardani, who is detained in Rajai Shahrkaraj prison, is to be executed on 4 July 2007.

Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that the "sentence of death may be imposed only for the most serious crimes".

The hijacking of a passenger plane is certainly a serious offence. Indeed, Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, which has been ratified by the Islamic Republic of Iran and other 182 States, obliges your Government to make such acts "punishable by severe penalties". In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee (HRC) has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I observed in my last report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the HRC for the last time considered a report presented by your Excellency's Government, it

expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, paragraph 9). According to the information I have received, however, the aircraft hijacking attempted by Mr. Khaled Hardani was not intended to result in any killings and did not result in loss of life.

Moreover, the three men were reportedly sentenced to death on charges of "acts against national security" (eqdam 'aleyhe amniyat) and "mohareb", or enmity with God, rather than charges relating specifically to hijacking an aircraft. With regard to these charges I would like to draw attention to concerns I have already raised in correspondence with your Excellency's Government as well as in general reports. As I have remarked in the section on the "most serious crime requirement" of my most recent report to the Human Rights Council, the imposition of the death penalty for offences such as "acts against national security", "has presented particular complexities, inasmuch as offences against the State or the political order are often drawn broadly so as to encompass both non-serious and very serious crimes and ambiguously so as to leave the Government discretion in defining the offence." (A/HRC/4/20, paragraph 51). In my communication to your Excellency's Government of 31 August 2006 concerning the imposition of the death penalty against Ali Motirijjad and others (reproduced in A/HRC/4/20/Add.1, pages 165f) I raised similar concerns with regard to the charge of "mohareb": "I am concerned that this charge, which according to my information in Iran is waged against political dissidents, critics of the Government and persons accused of espionage, might not be sufficiently welldefined to satisfy the very strict standards of legality set by Article 6(2) ICCPR for the imposition and execution of the death penalty. Indeed, in order for sentence of death to be imposed "in accordance with the law", the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not so punishable. The concept of a "fair trial" similarly requires that the elements of the crime charged be known in sufficient detail to the defendant for him to be able to effectively address them." My query to your Government to provide the definition of "mohareb" under Iranian law has unfortunately remained without a reply as of to date.

On all these grounds, I would therefore urge your Excellency's Government to suspend the execution and commute the death sentence imposed on Khaled Hardani.

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

1. Is my understanding of the facts of the case accurate?
2. What remedies remain available to Khaled Hardani, Shahram Pour Mansouri and Farhang Pour Mansouri against their execution? Please provide information on any developments in their cases.

3. What are the definitions of “acts against national security” (eqdam ‘aleyhe amniyat) and “mohareb”? Does the law identify criteria for when the death penalty can be imposed against persons found guilty of these offences?

Response from the Government of the Islamic Republic of Iran dated 19 February 2008

Mr. Khaled Hardani, Mr. Shahram Pourmansouri and Mr. Farhang Pourmansouri were charged with hijacking. Their cases were thoroughly put under investigation and following exhaustion of legal proceedings, they were found guilty of hijacking and the relevant court sentenced them to death. Despite their heavy offense, the amnesty commission on the basis of Islamic affection and taking into consideration their situation, approved the proposed one degree abatement, and commuted their sentence to life imprisonment.

Islamic Republic of Iran: Death Sentences of Farzad Alizadeh Mohajer and Mohammad Zafari

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 11 June 2007

I would like to draw the attention of your Excellency’s Government to the case of Mr. Farzad Alizadeh Mohajer, also known as Abbas, and Mr. Mohammad Zafari, two men reportedly at risk of execution having been found guilty of raping a young girl. According to the information I have received, in January or February 2005 Branch 17 of the Revolutionary Court in Karaj found Farzad Alizadeh Mohajer and Mohammad Zafari guilty of raping a girl and sentenced them to death. The sentences were upheld on appeal on 6 September 2006 by Branch 77 of the Criminal Court in Tehran, and were subsequently confirmed by Branch 39 of the Supreme Court.

Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that the “sentence of death may be imposed only for the most serious crimes”. The rape of a child is undoubtedly a very serious crime and your Government is obliged, also under international law, including the Convention on the Rights of the Child and the

Convention on the Elimination of All Forms of Discrimination Against Women, to make severe penalties applicable to persons found guilty of this crime.

In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee (HRC) has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I observed in my last report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the HRC for the last time considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, paragraph 9).

I would therefore urge your Excellency's Government to suspend the execution and commute the death sentence imposed on Farzad Alizadeh Mohajer and Mohammad Zafari into a sentence of long term imprisonment.

It is further my responsibility under the mandates provided to me by the Human Rights Council to seek to clarify all such cases brought to my attention. Since I am expected to report on this case to the Council I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate?
2. What remedies remain available to Farzad Alizadeh Mohajer and Mohammad Zafari against their execution? Please provide information on any developments in these cases.
3. Does your Excellency's Government intend to pursue a limitation of the scope of offences to which the death penalty is applicable? If so, what steps have been taken?

Islamic Republic of Iran: Death Sentences of Ms Mokarrameh Ebrahimi and an Unnamed Man

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

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

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 20 June 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Ms Mokarrameh Ebrahimi and an unnamed man who are due to be executed by stoning on 21 June, 2007. It is our understanding that both were charged and convicted of the offence of adultery and sentenced to death by the Office of Showraye Tameen of Ghazvin province and that the sentence is due to be carried out in the Behest Zahra cemetery in Ghazvin province. Appeals to the Judicial Commission for Amnesty and clemency were apparently rejected. Both have been held in prison for the past eleven years, Ms Ebrahimi is currently detained in Choubin Province in Ghazvin province.

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences.

It is our view that the death penalty as applied in these cases does not fall within the category of the "most serious crimes" for which international law countenances its possible application. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984). In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty "for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life" (CCPR/C/28/Add.15, 3 August 2003, paragraph 8).

We would also like to draw your Government's attention to Resolution 2005/39 of the Commission on Human Rights, which reminded Governments that corporal punishment, can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to

corporal punishment, including excessive chastisement ordered as punishment for a crime.

In light of this review of basic human rights norms recognized by the international community, we would respectfully request your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law.

Islamic Republic of Iran: Death Sentence of Mosleh Zamani

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 23 July 2007 sent with the Special Rapporteur on the question of torture

We are writing regarding Mosleh Zamani, who is reportedly at imminent risk of execution for a crime committed when he was allegedly 17. According to the information received:

Mr Zamani was charged with abducting and having sexual relations with a woman (with whom he was in a relationship). He was convicted and sentenced to death in 2006. It is reported that Mr Zamani had inadequate legal representation during his trial and appeals. His sentence was upheld by Iran's Supreme Court in early July 2007 and referred to judicial authorities charged with implementing the verdict on 17 July. He is currently detained at Sanandaj.

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences.

As your Excellency is aware this is not the first case of juvenile offenders being sentenced to death and/or facing imminent execution we have received regarding Iran. While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that the execution of Mosleh Zamani and any further executions of juvenile offenders are

incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

It is our view that the death penalty as applied in this case does not fall within the category of the “most serious crimes” for which international law countenances its possible application. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984). In its General Comment No. 6, the United Nations Human Rights Committee has stated that “the expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure”. Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty “for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life” (CCPR/C/28/Add.15, 3 August 2003, paragraph 8).

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. This includes, most urgently, the suspension of the execution of Mr Zamani and the commutation of his sentence.

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

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy.

2. Please provide details regarding the charges against Mosleh Zamani including access to legal counsel, public nature of hearings and judgments, and their conviction and sentence.

**Islamic Republic of Iran: Death Sentences of Adnan Hassanpour and
Abdolwahed Butimar**

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males (human rights defenders)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided the Government of the Islamic Republic of Iran regarding the death sentences of Adnan Hassanpour and Abdolwahed Butimar.

However, the SR would note that the information provided does not address a number of more general issues raised in this communication. The SR would appreciate an explanation of why its domestic law imposes the death sentence for the crime of espionage even though this is inconsistent with the requirement of international law that death be imposed only for the “most serious crimes”, a requirement which is properly interpreted to limit the death penalty to crimes in which there is an intention to kill and a resulting loss of life.

Urgent appeal dated 26 July 2007 sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders.

We would like to draw the attention of your Government to information we have received regarding Mr Adnan Hassanpour and his cousin, Mr Abdolwahed Butimar who have been sentenced to death. Mr Hassanpour is a Kurdish journalist and an advocate of cultural rights for members of the Kurdish Iranian community residing in Iran. He is also a former member of the editorial board of the Kurdish-Persian journal Aso (Horizon) which was shut down by the Iranian authorities in August 2005. Mr Butimar is an environmental activist and director of the environmental organisation, The Green Mountain Society. According to information received:

Mr Butimar and Mr Hassanpour were arrested in Marivan, in the province of Kordestan on 23 December 2006 and 25 January 2007 respectively. They were reportedly detained incommunicado in a Ministry of Intelligence facility in Marivan before being transferred to Marivan Prison on 26 March 2007. Members of the Intelligence Service searched the home of Mr Butimar following his arrest. They allegedly found items relating to Kurdish identity such as flags, videos, and family photos. These items were confiscated and later used as evidence against Mr Hassanpour and Mr Butimar in their trial at

the Revolutionary Court in Sanandaj on 12 June 2007 on charges of espionage and the crime of “Moharebeh” (being an enemy of God). On 17 July 2007, the two men were informed that they had been sentenced to death.

According to their lawyer, Mr Saleh Nikbakht, Mr Hassanpour’s charges are linked to a phone exchange he had with a staff of Radio Voice of America. Mr Butimar was also charged with carrying a lethal weapon although Mr Nikbakht has said that this charge is without any supporting evidence. The Mehr News Agency has also alleged the involvement of Mr Hassanpour with Kurdish opposition groups and have reportedly implied that he assisted two known Kurdish activists, wanted by the Iranian authorities, to flee Iran.

Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that the “sentence of death may be imposed only for the most serious crimes”.

The charge of espionage is certainly a serious offence. In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, paragraph 9). According to the information we have received, the offences for which the above two persons have been convicted were not intended to result in any killings and did not result in loss of life.

Moreover, regarding the charges of “mohareb”, we would like to draw attention to concerns already raised in correspondence with your Excellency’s Government as well as in general reports. In a communication to your Excellency’s Government of 31 August 2006 sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the imposition of the death penalty against Ali Motirijejad and others (reproduced in A/HRC/4/20/Add.1, pages 165f) similar concerns were raised with regard to the charge of “mohareb”: “I am concerned that this charge, which according to my information in Iran is directed mainly against political dissidents, critics of the Government and persons accused of espionage, might not be sufficiently well defined to satisfy the very strict standards of legality set by Article 6(2) ICCPR for the imposition and carrying out of the death penalty. In order for

sentence of death to be imposed “in accordance with the law”, the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not so punishable. The concept of a “fair trial” similarly requires that the elements of the crime charged be known in sufficient detail to the defendant for him to be able to effectively address them.” The query to your Government to provide the definition of “mohareb” under Iranian law has unfortunately remained without a reply to date.

Concern is expressed that the aforementioned sentence of the death penalty imposed against Mr Hassanpour and Mr Butimar may be related to their peaceful work in the defence of human rights, in particular the rights of the Kurdish population.

While we do not wish to prejudge the accuracy of these allegations, we should also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression of the above mentioned persons, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights which provides that " Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

We would also like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring your Excellency’s attention to the following provisions, and in particular:

- article 5 points b) and c) which provides that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

- article 6 points b) and c) which provides that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; to

study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matter.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the legal basis of the arrest and sentencing of Adnan Hassanpour and Abdolwahed Butimar, and how these measures are compatible with international norms and standards applicable as contained in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders. In particular, please provide details regarding the exact charges against Adnan Hassanpour and Mr Abdolwahed Butimar, as well as on access to legal counsel, public nature of hearings and judgments, the conviction and sentence, and the post-conviction proceedings in his case.
3. Please provide details of the remedies against the execution of the death sentence still available to them.

Response from the Government Islamic Republic of Iran dated 23 August 2007

The Iranian Government responded that Mr Abolwahed Butimar was charged with actions against national security through the purchase and possession of war arms and munitions and that he had been arrested while delivering weapons to a terrorist group PEJAK. Mr Adnan Hassanpour was charged with espionage in favour of aliens through mapping military and police sites and their transfer to aliens. He was also charged with cooperation and organizational relations with PEJAK, receiving money from terrorists groups and their delivery to newspapers. They had been sentenced to death and the verdict had been presented to the Supreme Court for a final decision. The charges had no connection with journalism.

Islamic Republic of Iran: Death Sentences of 20 Men

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 20 males

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur takes note of the information provided the Government of the Islamic Republic of Iran regarding the death sentences and execution of 20 men.

Allegation letter dated 23 August 2007

On 10 July, 2007 a judiciary Spokesperson, Alireza Jamshidi reportedly stated that 20 men would be executed in the coming days for offences such as rape, insulting religious sanctions and laws and homosexuality. Mr Jamshidi reportedly stated that 15 more men were being tried on similar offences and could receive death sentences.

I am writing concerning information I have received that 12 men convicted for various offences including rape and kidnapping were hanged on 22 July, 2007. Tehran's public prosecutor Saeed Mortazavi is reported to have said that dozens of bandits, robbers and rapists had been arrested in recent weeks and that 12 were hanged on the above date in Tehran. The Public Prosecutor is also reported to have stated that four other convicts were executed the previous week.

In late July, 2007 a widely broadcast open letter to the authorities from mothers of those accused of being "delinquents" and "crooks" and detained in Evin prison cites their plea that their sons are afforded the right to a fair trial but notes legal procedures were not followed in their cases and that they were tortured. One such person is believed to have been Meysam Lotfi. It also states that some of this group were already sentenced to death and executed and it is my understanding that at least sixteen members of that Group have already been executed.

Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant

on Civil and Political Rights, to which Iran is a party, provides that the “sentence of death may be imposed only for the most serious crimes”.

It is my view that the death penalty as applied in these cases does not fall within the category of the “most serious crimes” for which international law countenances its possible application. In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, paragraph 9).

While I do not wish to prejudge the accuracy of the allegations reported above, I respectfully remind your Excellency that “in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (International Covenant on Civil and Political Rights, ICCPR) admits of no exception” (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right to a fair and public hearing by a competent, independent and impartial tribunal established by law (article 14(1) ICCPR) and the “right to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”(Article 14(3)(b) ICCPR). I would note that it is not possible in relation to complex cases, and especially instances in which the death penalty is a consideration, to complete all legal proceedings from arrest to conviction, sentencing and implementation of the death penalty in a matter of a few weeks without violating Article 14(1) ICCPR.

In light of these serious and pressing concerns, based upon human rights norms recognized by the international community, I would respectfully request Your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. Unless your Excellency's Government is able to demonstrate respect for these essential procedural and substantive protections, which flow from the international obligations accepted by Iran, death sentences imposed must be commuted.

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

1. Are the facts alleged in the above summary of the case accurate?

2. Please provide details regarding the exact charges, trial and appeal proceedings against: the 12 persons who were hanged on 22 July, 2007, the persons referred to in the above open letter and the twenty persons who were according to the Judiciary spokesperson due to be executed in the coming days.

Response from the Government of the Islamic Republic of Iran dated 19 February 2008

The Government of Iran provided the following information.

Imposing the death penalty for the most serious crimes is the right of countries and there is no consensus or internationally recognized documents for its total abolishment. In many legal systems of the world, armed robbery, drug smuggling, kidnapping and rape are examples of the above-mentioned crimes. Public announcement and transparency have been amongst the official policy of the Islamic Republic of Iran and statements of the judiciary spokesperson have also been in the same line.

The special situation of the Islamic Republic of Iran due to being the neighbour to Afghanistan as well as the threats imposed by the prevailing instability in its neighbouring countries, including Iraq, has encouraged the Iranian government to protect its public security against organized crimes seriously, and deal with perpetrators of those serious crimes through enforcement of strict legal instruments.

Regarding the files of the convicted individuals:

Despite fabricated allegations that in the course of the recent campaign of the Government of the Islamic Republic of Iran against hooligans there have been cases such as unfair trials, short trials, the absence of lawyers during legal proceedings, imposing of the death penalty for political convicts under the name of hooligans, etc., and in response to the misleading allegations, please find hereunder the details of 21 cases of execution (14 in Tehran and 7 in Khorasan Razavi province). As one can see, the issued verdicts have all been reviewed thoroughly and a long time has passed since their issuance and moreover, there has been an absence of urgency in the issuance of the verdict and in legal proceedings.

A. The execution of armed robbers in the city of Tehran

1. Mr. Fazel Ramezani, son of Seyed Rahim, 2. Mr. Hajat Moradmohammadi, son of Nourali.

The above-mentioned individuals were brought to the court of justice, charged with armed robbery, disobedience and armed clash with police forces, blackmail, arson to people's houses, disturbing people's life, creation of fear and terror through threat, selling and buying of weapons. Following their hearing and the defence given by their lawyer, and judicial examinations and procedures, branch 27 of Tehran Province Court of Revolution sentenced them to death through first instance verdict No. 132484 of 20 May, 1999. The said verdict was reviewed and following a hearing of the defence presented by their lawyer, Mr. Mohammad Amarlou, branch 32 of the State Supreme Court confirmed the earlier verdict through verdict No. 32/50 of 16 May, 2001, which was carried out.

3. Ebrahim Eskandari, son of Esmaeil.

The abovementioned was charged with premeditated murder with a fire arm, participation in bank armed robbery, theft of travelers' cheques and gold, accomplice in theft and hiding of stolen goods/property. Following investigations and examination of the defence provided by the lawyer, branch 15 of Tehran court of Revolution sentenced him to death, through first instance verdict No. 4482 dated 8.3.2005. The verdict was reviewed and following a hearing of the defence presented by Mr. Eskandari's lawyer, Mr. Seyed Hossein Fatemian, branch 39 of the State Supreme Court confirmed the earlier verdict through verdict No. 162 of 14.5.2005, which was carried out.

4. Mr. Majid Kavousi, son of Mohammadtaghi, 5. Mr. Hossein Kavousi, son of Mohsen.

The mentioned individuals were charged with premeditated murder of three people (bank guard, bank customer and a judge), stealing of bank guard's pistol, intentional wounding of four people by a fire arm during an armed bank robbery, five cases of armed bank robbery, three cases of armed stealing of private cars and stealing the weapon of the guard of Kirghizistan Embassy in Tehran.

Pursuant to investigations and examination of the defence provided by the lawyer, branch 5 of Tehran court of Revolution sentenced them to death, through first instance verdict No. 4053 dated 21.2.2007. The verdict was reexamined and following a hearing of the defence presented by lawyers of the afore-mentioned individuals, (Mr. Asghar Atapour and Mr. Seyed Alireza Jafarian), branch 32 of the State Supreme Court confirmed the earlier verdict through verdict No. 57 of 10 June, 2007, which was carried out.

B. Execution of drug traffickers in the city of Tehran

1. Mr. Siyamak Dousti, son of Akbar.

The abovementioned, with repetitious convictions for selling narcotics and escaping from prison, selling 43.200 kg of opium and hashish, carrying 4.100 kg of heroin and 3 kg of opium was sentenced to death, by branch 29 of Tehran Court of Revolution, through the first instance verdict No. 812 of 4 December 2005. The verdict was re-examined and following a hearing of the defence presented by his lawyer, (Mr. Seyed Javad Hosseini Akhgar), the State Supreme Court confirmed the earlier verdict through verdict No. 2894 of 29.1.2006, which was carried out.

2. Mr. Rasoul Aminzadeh, son of Ahmad.

The abovementioned, with repetitious convictions for narcotics and escaping from prison, carrying and holding 4 kg of opium and 270 grams of heroin was sentenced to death, by branch 17 of Tehran Court of Revolution, through first instance verdict No. 8008 of 30, April, 2006. The verdict was re-examined and following a hearing of the defence presented by his lawyer, (Mr. Saeid Khani), the State Supreme Court confirmed the earlier verdict through verdict No. 861 of 18 June, 2006, which was carried out.

3. Mr. Babak Dousthosseini, son of Safarali.

The aforementioned was charged with buying and selling 300 kg of opium, as an accomplice in carrying and holding 233 kg of opium, as an accomplice in the provision of and holding 9.600 kg of heroin, as an accomplice in buying and holding 24 kg of opium and for illegally holding arms and ammunition, and pursuant to an examination of the provided defence, he was sentenced to death, by branch 15 of the Tehran Court of Revolution, through the first instance verdict No. 4037 of 5.3.2007. The verdict was re-examined and reviewed, and following a hearing of the defence presented by his lawyer, (Mr.MohammadReza Shadan), the State Supreme Court confirmed the earlier verdict through verdict No. 148/86, dated 29.4.2007, which was carried out.

4. Mr. Sarvar Sarani, son of Gholam, 5. Mr. Akbar Zehin Mobarhen, son of Ahmad.

Mr. Sarvar Sarani was sued and charged with repetitious buying and selling of narcotics. At the time of the arrest he held 62 kg of heroin, 12 kg of which was arranged to be sold. Mr. Akbar Zehin Mobarhen was charged and convicted with accomplice in presentation for sale of 12 kg of heroin. They were sentenced to death by branch 14 of Tehran Court of Revolution, through the first instance verdict No. 978 of 22 July, 2001. The verdict was re-examined and reviewed, and following a hearing of the defence presented by their lawyers, (Mr.Mohammad Afshin and Mr. Farhad Ghahramani), the State Supreme Court confirmed the earlier verdict through verdict No. 4351, dated 5.12.2001, which was carried out.

6. Gholamhossein Shadab, son of Aliasghar.

The abovementioned was charged and convicted with holding and carrying 4.270 kg of heroin and consumption of heroin. He was sentenced to death by branch 26 of the Tehran Court of Revolution, through the first instance verdict No. 53 of 29 May, 2006. The verdict was re-examined and reviewed, and following a hearing of the defence presented by his lawyer, (Mr.Hossein Zaeim), the State Supreme Court confirmed the earlier verdict through verdict No. 1100, dated 9 July, 2006, which was carried out.

7. Hamid Totazehi, son of Ghaderbakhsh.

The abovementioned, with a long background in trafficking and selling of narcotics, was sued, and also, at the time of arrest he illegally held a fire arm and 350 kg of opium. Pursuant to a hearing of the defence provided by the defendant's lawyer, branch 1 of Karaj Court of Revolution, sentenced him to death, through the first instance verdict No. 144/1/85/459 of 22 May, 2006. The verdict was re-examined and reviewed, and following a hearing of the defence presented by his lawyer, (Mr.Seyedmehdi Hosseini Darabi), the State Supreme Court confirmed the earlier verdict through verdict No. 332/85/2072, dated 14 October, 2006, which was carried out.

C. Execution of perpetrators of rape and hooligans in the City of Tehran.

1. Mr. Hossin Rouhzadeh, son of Taherali, 2. Mr. Abolfazl Sadeghi, son of Gholamreza.

The abovementioned individuals were charged and convicted with kidnapping, rape, assault and battery, theft, blackmail, disturbing of people's life. Branch 77 of the Tehran Province Penal Court sentenced them to death, through the first instance verdict No. 221 and 222 of 14 November, 2006. The verdict was re-examined and reviewed, and following a hearing of the defence presented by their lawyers, (Mr. Akbar Kardan and Mr. Kambiz Zandiyeh), branch 32 of the State Supreme Court confirmed the earlier verdict through verdict No. 32/43, dated 21 May, 2007, which was carried out.

D. Execution of perpetrators of rape and hooligans in the City of Mashhad.

1. Mr. Medi Vahabiyani, Son of Hossein, 2. Mr. Hadi Salahi, son of Shahavar, 3. Mr. Ahmad Ehsani, son of Safar, 4. Mr. Mehdi Mohammadpour, son of Vali

The abovementioned individuals were charged and convicted with 11 cases of kidnapping and rape. Branch 5 of Khorasan Razavi (Mashhad) Province Penal Court sentenced them to death, through the first instance verdict No. 192/1839 of 18 December, 2006. The verdict was re-examined and reviewed, and following a hearing of the defence presented by their appointed lawyers, (Mr. Seyed Morteza Javaheri, Mr. Ebrahim Amaniyani, Mr. Abbasali Sohrabi and Mr. Akbar Ghafouri), branch 32 of the State Supreme Court confirmed the earlier verdict through verdict No. 32/32, dated 19 May, 2007, which was carried out.

5. Mr. Reza Soltaniyeh Zanjani, son of Morteza.

Mr. Zanjani was charged and convicted with kidnapping and rape. Branch 5 of the Khorasan Razavi (Mashhad) Province Penal Court sentenced him to death, through first instance verdict No. 18/18 of 3 April 2005. The verdict was re-examined and reviewed, and following a hearing of the defence presented by his lawyer, (Mr. Seyed Majid Karimiyan Eghbal), branch 28 of the State Supreme Court confirmed the earlier verdict through verdict No. 28/158, dated 21 July 2005, which was carried out.

6. Mr. Abdoghafour Khoshdoust, son of Hakim, 7. Mr. Mohammad Bahadori

The afore-mentioned individuals were charged and convicted with kidnapping and rape. Branch 5 of Khorasan Razavi (Mashhad) Province Penal Court sentenced them to death, through the first instance verdict No. 185/1832 of 17 December 2006. The verdict was re-examined and reviewed, and following a hearing of the defence presented by their appointed lawyers (Mr. Mohammad Khoshkhoo, Mr. Alireza Yayhyayi, Mr. Gholamhassan Delavar and Mr. Abazar Jalili Dashtabadi), branch 32 of the State Supreme Court confirmed the earlier verdict through verdict No. 32/1, dated 18 April 2007, which was carried out.

As it was described above, all the individuals who received the death penalty enjoyed their right to fair trial as well as enough time for a review and examination of their cases through legal proceedings. Any allegation on their torture is categorically baseless and a fabrication of lies.

Islamic Republic of Iran: Death Sentence of Mohamed Latif

Violation alleged: 1 male (juvenile offender)

Subject(s) of appeal: Non-respect of international standards relating to the imposition of capital punishment

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 23 August 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Mohamed Latif who is at imminent risk of execution having been sentenced to death for murder committed when he was 14 years of age. According to information we have received Mohamed was convicted of the 2004 murder of Mansour Keihaei and of injuring another person in the city of Saveh. A subsequent appeal was apparently lodged with the Supreme Court concerning Mohamed's mental age but the appeal was reportedly rejected.

As your Excellency is aware this is not the first case of juvenile offenders being sentenced to death and/or facing imminent execution we have received regarding Iran. While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that the execution of Mohamed Latif as well as any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We would also like to underline that sentencing a juvenile to death in itself amounts to cruel, inhuman and degrading punishment, which is prohibited inter alia in the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of

persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. This includes, most urgently, the suspension of the execution of Mr Latif and the commutation of his sentence.

It is our responsibility under the mandates provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations. We undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Islamic Republic of Iran: Death Sentence of Behnam Zare

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran with respect to the death sentence of Behnam Zare.

The Special Rapporteur also welcomes the affirmation by the Government of the Islamic Republic of Iran that juvenile offenders should not be executed. However, he would reiterate his earlier comment that there is no other country in the world in relation to which he regularly receives allegations of this type (A/HRC/4/20, para. 17) and emphasize that merely taking gradual measures to decrease the carrying out of sentences to a level “close to a stop” is an utterly inadequate approach. Inasmuch as laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran, they should be promptly repealed.

Allegation letter dated 4 September 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Behnam Zare, who is at imminent risk of execution having been sentenced to death for murder committed when he was 15 years of age. According to the information received:

Behnam was reportedly convicted of the murder of a man named Mehrdad by the Fars Criminal Court. A subsequent appeal was apparently lodged with Branch 33 of the Supreme Court but rejected. Behnam was reportedly not aware that he had been sentenced to death until a recent visit by his lawyer. It was reported that the victim's family have refused to pardon Behnam and the case has now been passed to the Office for the Implementation of Sentences.

As your Excellency is aware this is not the first case of juvenile offenders being sentenced to death and/or facing imminent execution we have received regarding Iran. Indeed, this is the ninth occasion that we have written to your Government this year concerning executions of juvenile offenders. While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that the execution of Behnam Zare as well as any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We would also like to underline that sentencing a juvenile to death in itself amounts to cruel, inhuman and degrading punishment, which is prohibited inter alia in the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with

accepted standards of international human rights law. This includes, most urgently, the suspension of the execution of Mr Zare and the commutation of his sentence.

It is our responsibility under the mandates provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations. We undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Response from the Government of the Islamic Republic of Iran dated 14 February 2008

The Government of Iran provided the following information.

In the Islamic Republic of Iran, the penalty for premeditated murder has two aspects: private and public. Since the first one is in relation to the denial and spoil of the rights of guardians of the murder victim, it is given priority and is of high importance. In the judicial system of Muslim countries, including I.R. Iran, "Qesas"(lex talionis-retribution in kind) is the verdict for premeditated murder. For that purpose, enforcement of Qesas depends upon the request to be made by guardians of the murder victim; and the Government is solely delegated to carry out the verdict, on behalf of the former.

The second aspect, which deals with denial and spoil of the public rights, is the responsibility of the Government for the establishment and protection of security in society. For the realization of this responsibility, the lawmaker has anticipated five to fifteen years of imprisonment. In the case of disclamation of Qesas by guardians of the murder victim, through remission or payment of Diyeh (blood money) to guardians of the murder victim by the convicted party, an imprisonment penalty shall be imposed. In other words, disclamation, on the side of guardians of the murder victim, puts an end to Qesas, but the penalty of imprisonment, still remains as the duty of the government. So, the sentence of Qesas is not open to pardon or amnesty by the state, in absence of consent from guardians of the murder victim. Meanwhile, the Government of the Islamic Republic of Iran strives to apply mechanisms, such as the provision of financial assistance to the guardians, which might result in receiving the required consent from them.

As for Mr. Javad Zare'I, known as Behnam Zare, according to the existing information, he was 16 years old at the time of perpetuating the crime (21.4.2005), which led to his arrest on 23.4.2005. He has confessed to committing the murder and on that basis, the penal court of the province of Fars sentenced him to Qesas, through verdict of 23 June, 2005. Pursuant to the request for appeal from the convict and his lawyer, branch 33 of State Supreme Court confirmed the earlier verdict on 14 May, 2006 and then the guardians of the murder victim requested carrying out the verdict. But the judicial system, on the basis of human considerations, has entered the case into conciliation process and is seriously following the case with the hope for final settlement. Therefore, carrying out the penalty is not in the programme of work.

As the distinguished rapporteurs have mentioned, although there have been a few cases of murder under the age of 18, the pertinent authorities have been exerting their utmost effort to decrease carrying out verdicts to a level close to stop, with the hope of ultimate conciliation. In conclusion, we would like to request the distinguished Special Rapporteur on the question of Torture to let us know under which mandate he has expressed concern in the case, and in what sense he has found signs of torture in it.

Islamic Republic of Iran: Death Sentence of Soghra Najafpoor

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 female (juvenile offender)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran with respect to the death sentence of Soghra Najafpoor.

Urgent appeal dated 5 November 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Soghra Najafpoor, who after having spent 18 years in prison is at imminent risk of execution, having been sentenced to death for murder committed when she was 13 years of age. Ms. Najafpoor was reportedly convicted of the killing of an 8 year boy. It was reported that the victim's family has filled out the request for execution following Ms. Najafpoor's recent release from prison.

As your Excellency is aware this is not the first case of juvenile offenders being sentenced to death and/or facing imminent execution we have received regarding Iran. Indeed, this is the tenth occasion that we have written to your Government this year concerning executions of juvenile offenders. While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that the execution of Soghra Najafpoor as well as any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We would also like to underline that sentencing a juvenile to death in itself amounts to cruel, inhuman and degrading punishment, which is prohibited inter alia in the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. This includes, most urgently, the suspension of the execution of Ms. Najafpour and the commutation of her sentence.

Response from the Government of the Islamic Republic of Iran dated 12 February 2008

In the Islamic Republic of Iran, the penalty for premeditated murder has two aspects: 1. private, 2. public. Since, the first one is in relation with denial and spoil of the rights of guardians of the murder victim, it is given priority and is of high importance. In the judicial system of Muslim countries, including I.R. Iran, "Qesas" (lex talionis-retribution in kind) is the verdict for premeditated murder. For that purpose, enforcement of Qesas depends upon the request to be made by guardians of the murder victim; and the Government is solely delegated to carry out the verdict, on behalf of the former.

The second aspect which deals with denial and spoil of the public rights is the responsibility of the Government for establishment and protection of security in the society. For realization of this responsibility, the lawmaker has anticipated five to fifteen years of imprisonment. In case of disclamation of Qesas by guardians of the murder victim, through payment of Diyeh (blood money) to guardians of the murder victim by the convicted party, imprisonment penalty shall be exercised. In other words, disclamation, on the side of guardians of the murder victim, puts an end to Qesas, but the penalty of imprisonment, still remains as the duty of government. So, sentence of Qesas is not open to pardon or amnesty by the state, in absence of consent from guardians of the murder victim. Meanwhile, the Government of the Islamic Republic of Iran strives to apply mechanisms, such as provision of financial assistance to the guardians, which might end in receiving the required consent from them.

Ms. Soghra Najafpour was sued on the basis of the complaint filed by guardians of the murder victim with the charge of premeditated murder. Following judicial procedures and investigations, at the presence of her lawyer, the court of first instance,

ascertained her guilt and sentenced her to Qesas, through verdict No. 1122 dated 9 November, 1990. Pursuant to appeal by the convict and her lawyer, Branch 27 of the State Supreme Court confirmed the earlier verdict. With due regard to the insistence of guardians of the murder victim for carrying out the verdict, the state judicial system has been trying for resolution of the dispute through conciliation. Therefore, the case is in the conciliation procedure and enforcement of death penalty is not in the programme of work.

As the distinguished rapporteurs have mentioned, although there have been a few cases of murder under the age of 18, the pertinent authorities have been exerting their utmost effort to decrease carrying out verdicts to a level close to stop, with the hope of ultimate conciliation.

Islamic Republic of Iran: Death Sentence of Mohammad Reza Turk

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 14 November 2007

I would like to draw the attention of your Government to information I have received regarding Mohammad Reza Turk, who is at imminent risk of execution. He will reportedly be executed tomorrow morning at the in the central prison of Shiraz along with two other men. All three are convicted of murder in a village near Malayer in November 2005. At that time Mohammad Reza Turk was 16 years old. He is now 18 years old.

As your Excellency is aware this is not the first case of juvenile offenders being sentenced to death and/or facing imminent execution we have received regarding Iran. Indeed, this is the eleventh occasion that I have written to your Government this year concerning executions of juvenile offenders. While I do not wish to prejudge the accuracy of the allegations regarding this specific case, I would like to draw your attention once again to the fact that the execution of Mohammad Reza Turk as well as any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil

and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I would also like to underline that sentencing a juvenile to death in itself amounts to cruel, inhuman and degrading punishment, which is prohibited inter alia in the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this connection, I would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

I would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. This includes, most urgently, the suspension of the execution of Mohammad Reza Turk and the commutation of his sentence.

Islamic Republic of Iran: Death Sentence of Makwan Mouloudzadah

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran. However, the SR remains concerned by the interpretation by the Government of the Islamic Republic of Iran of the provision that “sentence of death may be imposed only for the most serious crimes”, a provision which is properly interpreted to limit the death penalty to crimes in which there is an intention to kill and a resulting loss of life.

Allegation letter dated 14 December 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Makwan Mouloudzadah who was executed on 5 December, 2007 for rapes allegedly committed when he was a minor. Mr Mouloudzadah aged 20 at the time of his execution was sentenced to death on 25 May, 2007 by Branch Seven of the Penal Court of the City of Kermanshah for the rape of three boys when he was 13 years of age. On 19 July 2007 the Supreme Court of Iran upheld the death sentence. It is my understanding that the execution occurred despite the retraction on the part of the witnesses during the trial of their evidence, despite reports that Mouloudzadah's confessions were coerced, and despite the fact that the Head of the Judiciary in Iran had ordered that the death sentence be suspended, and ordered a review. The case was supposed to be reviewed in Tehran, but was sent back to Kermanshah, where local judicial authorities quickly approved the execution.

As your Excellency is aware this is not the first case of juvenile offenders being executed or facing imminent execution we have received regarding Iran. Indeed, this is the twelfth occasion that we have written to your Government this year concerning executions of juvenile offenders. While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that the execution of Makwan Mouloudzadah as well as any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

We would also like to draw your Government's attention to the due process rights which all persons have, and which are especially important when there is the possibility of the application of the death penalty. Under Art 14(3)(g) of the International Covenant on Civil and Political Rights (ICCPR), defendants have the right not to be compelled to confess guilt. And importantly, given the facts alleged here, under Art 14(5) of the ICCPR, anyone convicted of a crime has the right to have that conviction and sentence reviewed by a higher tribunal according to law. It seems that Makwan Mouloudzadah may have been denied this basic right, and that as a

result, he was executed – despite the fact that a senior Judge had ordered a review in his case.

We would also like to underline that sentencing a juvenile to death in itself amounts to cruel, inhuman and degrading punishment, which is prohibited inter alia in the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law.

Annex:

Applicable principles of international human rights law:

- Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life. Besides, article 6(5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age;

- Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989. Article 6 provides that State Parties recognize that every child has the inherent right to life. In addition, article 37(a) provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age.

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), General Assembly resolution 40/33 of 29 November 1985. In particular, rules 14, 15 and 17.2 provide for the right to a fair and just trial for juvenile offenders and prohibit the imposition of capital punishment for any crime committed by juveniles.

- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984. In particular, paragraph 3 provides that persons below eighteen years of age at the time of the commission of the crime shall not be sentenced to death.

Response from the Government of the Islamic Republic of Iran dated 10 December 2007 and 28 December 2007

The Government informed that statements of several witnesses and victims and the repeated confessions made by Makwan Moloudzadeh and members of his hooligans group, as well as the conformity and correspondence between the confessions and the details expressed by victims and witnesses led to substantiation and further confirmation of the charges by the Court and issuing of verdict on one of the cases,

from amongst the collection of charges filed against him in relation with raping of juveniles. Commander of Gendarmerie Forces of Paveh had already reported and confirmed the existence of the hooligan network of Mr. Moloudzadeh being involved in ravishment, raping, blackmail, assault and battery and knife-stabbing. Repeated commitment of crimes after the age of 18, are ascertained by the court of justice and the allegation of his minority, or under age at the time of committing crimes is categorically unfounded and denied. The Provincial Court, comprised of five judges, unanimously found him guilty through Verdict No. 35 of 7 June 2007, and sentenced him to punishment in accordance with the law. Therefore, the allegation of issuing a verdict on the basis of the judge's personal knowledge is baseless and rejected. The State Supreme Court, pursuant to exhausting of examinations and domestic remedies confirmed the verdict No. 423 of 1 August 2007. In the course of investigations the accused enjoyed the services of two lawyers. None of the Judiciary Branches and Appeal had any hesitation in confirming the verdict and the delay was merely due to making further examination and assurance of the age of Mr. Moloudzadeh (21 years of age was ascertained); and the verdict was carried out upon the approval. The Government informed that the use of hanging as a punishment against a criminal who had repeatedly (even after the age of 18) committed crimes such as raping and organization of gang groups which inter alia have destroyed lives of eleven juveniles (boys and girls) and has left irreparable and everlasting psychological bitter impacts on their lives, is considered a major crime and no international document or commitment disapproves that.

Islamic Republic of Iran: Death Sentence of Behnood

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 27 December 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding a young man identified as Behnood, who is at imminent risk of execution. He will reportedly be executed in the coming days following the confirmation by the Supreme Court of a death sentence. Behnood was convicted by a court in Tehran of murdering another boy during a street fight, when he was 17 years old.

As your Excellency is aware this is not the first case of juvenile offenders being sentenced to death and/or facing imminent execution we have received regarding Iran.

Indeed, this is the thirteenth occasion that we have written to your Government this year concerning executions of juvenile offenders. While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that the execution of Behnood as well as any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We would also like to underline that sentencing a juvenile to death in itself amounts to cruel, inhuman and degrading punishment, which is prohibited inter alia in the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. This includes, most urgently, the suspension of the execution of Behnood and the commutation of his sentence.

Islamic Republic of Iran: Death Sentence of Zohreh and Azar Kabiri

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 females

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 13 February 2008 sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding two women, Ms. **Zohreh**, aged 27, and Ms. **Azar Kabiri**, aged 28, two sisters from Khademabad, near Karaj, who have been sentenced to death by stoning for adultery. According to the information received:

On 5 February 2007, they were arrested in connection with allegations of adultery. On 17 March 2007, they were prosecuted in court, found guilty, and sentenced to 99 lashes. This sentence was executed but for unknown reasons, both women were returned to prison. Another trial took place for the same charges and they were sentenced to death by stoning on 5 August 2007. The Supreme Court later confirmed the sentence and they are currently awaiting the execution.

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that, as the first Special Rapporteur on extrajudicial, summary or arbitrary executions stated in 1985, the Safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the Economic and Social Council would "serve as criteria for ascertaining whether an execution is of a summary or arbitrary nature" (E/CN.4/1985/17, para. 24). These safeguards provide that "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences." It is our view that the death penalty as applied in this case does not fall within the category of the "most serious crimes" for which international law countenances its possible application. In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty "for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life" (CCPR/C/28/Add.15, 3 August 2003, paragraph 8).

We would also like to draw your Government's attention to Resolution 2005/39 of the Commission on Human Rights, which reminded Governments that corporal punishment, can amount to cruel, inhuman or degrading punishment or even to torture. In this context, we would like to recall the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called

upon States to abolish all forms of judicial and administrative corporal punishment without delay (A/60/316, para. 28). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Zohreh and Ms. Azar Kabiri are respected.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Zohreh and Ms. Azar Kabiri in compliance with the above international instruments.

Islamic Republic of Iran: Death Sentence of Mohammad Reza Haddadi

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response concerning these allegations.

Urgent appeal dated 29 February 2008 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Mr. **Mohammad Reza Haddadi**, who was reportedly sentenced to death for a crime committed when he was still a minor.

According to the information we have received:

On 6 January 2004, Mohammad Reza Haddadi was sentenced to death by the Criminal Court in Kazeroon for the kidnapping and murder of a taxi driver called Mohammed Bagher Rahmat. The events took place in August 2003, when Mr. Haddadi was only 15 years old. On 3 July 2005 the Supreme Court of Iran upheld the death sentence. Reportedly, Mr. Haddadi is currently detained in Adel Abad jail in the city of Shiraz, and is at imminent risk of execution.

As your Excellency is aware this is not the first case of juvenile offenders being executed or facing imminent execution we have received regarding Iran. Indeed, in 2007 alone the Special Rapporteur on extrajudicial, summary or arbitrary executions

has written on twelve occasions to your Government concerning executions of juvenile offenders. While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that the execution of Mohammad Reza Haddadi and any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of eighteen had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

We would also like to underline that sentencing a juvenile to death in itself amounts to cruel, inhuman and degrading punishment, which is prohibited *inter alia* in the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. This includes, most urgently, the suspension of the execution of Mr. Haddadi and the commutation of his sentence.

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

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy.
2. The Special Rapporteur on extrajudicial, summary or arbitrary executions also recalls my communications dated 5 January 2007 and 31 January 2007 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will

that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

3. Finally, we would respectfully reiterate the request made earlier by the Special Rapporteur on extrajudicial, summary or arbitrary executions for a comprehensive and detailed indication of the details of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court.

Islamic Republic of Iran: Death Sentences Shahbano Naddam, Tayebe Hojati, Soheila and Akram Mahdavi

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 4 females

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response concerning these allegations.

Urgent appeal dated 7 March 2008 sent with the Special Rapporteur on violence against women, its causes and consequences

We would like to draw the attention of your Government to information we have received regarding Ms. Shahbano Naddam, Ms. Tayebe Hojati, Ms. Soheila and Ms. Akram Mahdavi, who have reportedly been sentenced to death and are now at imminent risk of execution.

According to the information received:

Shahbano Naddam was arrested eleven years ago for the murder of her husband and sentenced to death. She claims that her husband committed suicide, and a forensic examination reportedly concluded that this was a possibility. She claimed that she had initially confessed to the murder for fear that her son would be accused instead.

Tayebe Hojati was convicted eight years ago of the murder of her husband and sentenced to death.

Soheila, was sentenced to death for the murder of her five day old baby. It is alleged that her son was born as a result of a relationship with a drug addict who had given her refuge a year earlier. As she refused to name the father the complaint was made by the Teheran Prosecutor and she was sentenced to qesas which reportedly is not open to pardon or amnesty by the Supreme Leader.

Akram Mahdavi was convicted five years ago of the murder of her husband and sentenced to death. Ms Mahdavi was forced to marry her husband who was 40 years older than she was. The man who helped her commit the crime will be freed by paying 60,000,000 Tomans “Dieh” (blood money).

We are bringing these cases to the attention of Your Excellency’s Government because in relation to each of them the information provided to us raises concern that each of the condemned women were sentenced to death following trials that may have fallen short of international fair trial standards and may not have respected the principle of non discrimination on the basis of sex.

While we do not wish to prejudge the accuracy of these allegations, we would like to remind your Excellency’s Government that although the death penalty is not prohibited under international law, it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences.

At present, we would like to highlight the following standards relating to the imposition of the death penalty:

- 1) “in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception” (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10);
- 2) “anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.” (Article 6(4) ICCPR).

In addition, the Convention on the Elimination of All Forms of Discrimination against Women, to which Iran is a Party, provides in its Article 2 that States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: ... (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.

The Commission on Human Rights in its Resolution 2005/41 on the Elimination on Violence against women further noted that all forms of violence against women occur within the context of de jure and de facto discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State.

It is our responsibility under the mandates provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human

Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide details regarding the fairness, in terms of international legal standards, of the trials accorded to Shahbano Naddam, Tayebe Hojati, Soheila and Akram Mahdavi and of the sentences imposed on them.
3. Please provide details of any avenues of appeal already exercised by the defendants and those still open to them to challenge their conviction and sentence.

Iraq: Death Sentences of Wassan Talib and Samar Sa'ad Abdullah

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 females

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 21 May 2007

I would like to draw the attention of your Government to information I have received regarding two persons, **Wassan Talib** and **Samar Sa'ad Abdullah**, both of whom I understand to be at imminent risk of execution. Wassan Talib was sentenced to death on 31 August, 2006 by the Central Criminal Court of Iraq for the 2005 murder of several members of the Iraqi security forces in Baghdad. Samar Sa'ad Abdullah was sentenced to death on 15 August, 2005 by the Central Criminal Court of al-Karkh for the murders of several members of her family. The Court of Cassation reportedly confirmed their sentences in February 2007.

Although the death penalty is not prohibited under international law, whenever it is applied it is essential that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in the relevant proceedings. I do not have any detailed accounts of the procedures followed in relation to the trials of these two individuals. I have no reason to believe, however, that they differed in any significant respect from those generally followed in the relevant courts. Based on what I consider to be reliable reports on the pre-trial and trial procedures currently followed before the Central Criminal Court of Iraq and other criminal courts of Iraq as well as appeals before the Court of Cassation, I am very concerned that the various fair trial standards required, especially in relation to capital offences, have not been met.

(1) It is reported that the authorities routinely fail to promptly advise detainees of the reasons for their arrest and subsequently of the details of the charges and evidence against them, thus violating the requirements of Article 9(2) of the International Covenant on Civil and Political Rights. (“the ICCPR”).

(2) The authorities routinely fail to bring defendants promptly before an investigative judge within 24 hours of arrest as required by Article 123 of the Code of Criminal Procedure, thus raising concerns as to compliance with Article 9(3) of the ICCPR. It is investigating judges who are required to carry out initial investigations into offences, although in practice it is reported that many defendants charged with capital offences confess while at police stations under the control of the Ministry of Interior. It is also reported that police frequently escort the accused to their first interrogation before an investigating judge. Confessions made before investigating judges are often given substantial weight at trials and confessions obtained under coercion are not specifically prohibited by the Code of Criminal Procedure.

(3) Defendants are frequently denied the right to an adequate defence. They are denied access to evidence against them, as well as to their counsel within a reasonable period of time that would enable them to mount an effective defense. These procedural defects amount to a violation of Article 14(3)(b) of the ICCPR. In practice there is a lack of adequate access to court-appointed counsel prior to the initial investigative hearing and subsequently. The vast majority of defendants are represented by counsel appointed by the court, whom they have never met and who have little or no knowledge of the charges or evidence against their clients. Access to defense counsel is routinely denied during the first sixty days of detention, and subsequently access to privately employed defence counsel is not facilitated, notwithstanding Article 123 of the Code of Criminal Procedure which provides for the right to be represented by legal counsel when being questioned during the pre-trial period. In a great many cases the system allocating court appointed counsel works against defendants, since they are not represented by the same counsel at the investigative or trial stage, eroding further their chances of securing an effective defense.

(4) Trial proceedings are usually brief, with sessions often lasting no more than fifteen to thirty minutes, during which the entire trial is concluded. Deliberations also typically do not last more than several minutes for each trial, including in complex cases involving serious crimes resulting in sentences of life imprisonment or the death penalty. It is not possible, in relation to complex cases, and especially instances in which the death penalty is a consideration, to dispose of the proceedings in such summary fashion without violating Article 14(1) ICCPR providing “Everyone shall be entitled to a fair and public hearing by a competent, independent, impartial tribunal established by law”.

(5) Defendants are often unaware of their rights under the law, including the right of appeal against sentence. Under Iraqi law, appeals must be filed with the Court of Cassation within 30 days of the verdict. It is reported that no appeals may be filed in the cases of many who have been sentenced to death and who have been represented by a court-appointed lawyer. However, even where the accused has been able to hire a lawyer of his own choosing, denial of prompt and adequate access to counsel mean that in many cases those convicted lose the opportunity to appeal their sentences as

they become aware of their rights only after the deadline for submissions has passed. As a result appeal procedures frequently violate article 14(5) ICCPR which provides “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law”.

Unless your Excellency’s Government is able to demonstrate respect for these essential procedural and substantive protections, which flow from the international obligations accepted by Iraq, in the cases involving Wassan Talib and Samar Sa’ad Abdullah, the death sentences imposed must be commuted.

Since I am expected to report on these cases to the UN Human Rights Council, I would be grateful for your cooperation and careful response to the issues raised. In addition to an expeditious first reply, I would greatly appreciate being informed about the further developments in this case.

Iraq: Death Sentences of Ali Hassan al-Majid, Sultan, Hashim Ahmad al-Ta’i and Hussain Rashid al-Tikriti

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 11 September 2007

I would like to draw the attention of your Government to information I have received regarding Ali Hassan al-Majid, Sultan, Hashim Ahmad al-Ta’i and Hussain Rashid al-Tikriti who are at imminent risk of execution.

According to information I have received:

The three were sentenced to death on 24 June, 2007 by the Special Iraqi Criminal Tribunal for genocide, war crimes and crimes against humanity and had their sentences confirmed by the Supreme Iraqi Criminal Tribunal on 4 September, 2007. The charges related to their roles during the 1988 Anfal Campaign of 1988 when 180 000 Iraqi Kurds died.

While I do not wish to prejudge the accuracy of these reports, I would like recall that “in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (ICCPR) admits of no exception” (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10).

I would note that I previously wrote to your Excellency's Government by letter dated 7 July 2006 raising concerns about proceedings before the Supreme Iraqi Criminal tribunal involving Saddam Hussein and other indictees. In the cases of Mr Al-Majjid, Mr al-Ta'i and Hussain Rashid al-Tikriti your Excellency's Government is similarly well aware of the serious concerns raised with regard to the compliance of the above trial with the requirements of a fair trial. These include the reported denial of the right (article 14(3)(e) ICCPR) to "examine, or have examined the witnesses against him", in addition to the fact that many witnesses give evidence without their identity being revealed to the defence. Interference in the trials of the Court by Iraqi politicians has also been widely reported (exemplified by the resignation of judge Rizgar Mohammed Amin and the removal of judge Said Hameesh).

I would reiterate concerns previously expressed regarding Article 27(2) of the Law of the Supreme Iraqi Criminal Tribunal, the first sentence of which reads: "No authority, including the President of the Republic, may grant a pardon or reduce the penalties issued by this Tribunal." This provision would appear to be irreconcilable with paragraph 4 of Article 6 ICCPR, providing that "[a]nyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

I am also gravely concerned about the second sentence of Article 27(2), providing that "[p]enalties shall be enforced within thirty days of the sentence or decision reaching finality." Considering the irremediable nature of capital punishment, this provision would appear to fail to take into account the numerous serious legal issues which, as the experience of other countries retaining the death penalty shows, can and do arise even after a death sentence has become "final". A period of thirty days does not provide sufficient time for the defence or for the wheels of justice to respond adequately to any subsequent issues that might be raised.

In the light of the above considerations, I would again urge your Excellency's Government to repeal Article 27(2) of the Law on the Supreme Iraqi Criminal Tribunal, or amend it as necessary to bring it in compliance with your Government's obligations under international law. As set forth above, this will require providing for the right to seek pardon or commutation of the sentence for convicts sentenced to death, as well as for adequate time to effectively exercise this right.

Unless your Excellency's Government is able to demonstrate respect for these essential procedural and substantive protections, which flow from the international obligations accepted by Iraq, in the cases of involving Mr Al-Majjid, Mr al-Ta'i and Mr. al-Tikriti, the death sentences imposed must be commuted.

Israel: Killing of Yehia al-Jabari

Violation alleged: Death due to attacks or killings by security forces of the State

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 28 June 2007

I am writing concerning Mr. Yehia al-Jabari who was shot dead by the Israeli military on 6 June, 2007 in Hebron and other family members who were shot and wounded. It is my understanding that at about 00.20 on 6 June, 2007 approximately 50 Israeli soldiers came to the house of Yehia al-Jabari in the B'er Haram area of Hebron city. Upon gaining entry to the house, soldiers reportedly dragged Rajih al-Jabari, the son of Yehia al-Jabari outside and violently assaulted him. At this point Yehia al-Jabari came outside his house together with his wife, Fatima and attempted to intervene to protect his son. He was shot once in the forehead by an Israeli soldier and died instantly. Fatima al-Jabari began screaming and attempted to reach her husband's body. At this point she was shot six times by an Israeli soldier and fell to the ground. Thereafter Radi and Kamil sons of Yehia exited their house and attempted to move their father's body from the steps where it was lying. Radi ignored shouts of a soldier to stop and was shot in the foot by an Israeli soldier.

It is my understanding that an Israeli spokeswoman stated that Palestinians in the house had thrown objects at the soldiers and that one person had tried to seize a soldier's gun. The spokeswoman reported: "As soon as the force entered the structure a group of around 10 Palestinians started to attack the force and wounded one of the officers. It led to a struggle in which a soldier had to open fire after a Palestinian grabbed his weapon".

In this connection, I would like to refer your Excellency's Government to its obligations reflected in a variety of international instruments. Article 6 of the International Covenant on Civil and Political Rights, to which Israel is a party, provides that no one shall be arbitrarily deprived of his or her life. In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

The conduct alleged would be equally unlawful in an armed conflict. Article 3 common to the Geneva Conventions of 1949 provides that "[p]ersons taking no active part in hostilities . . . shall in all circumstances be treated humanely" and, moreover, that such persons shall not be subjected to "violence to life and person, in particular murder...." The substance of this treaty provision is understood to apply as a matter of customary international law to every kind of armed conflict.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human

Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the allegations in the above summary of the events accurate?
2. What were the instructions given to the security forces before and during the above mentioned operations by the army?
3. Please provide details of any investigation or inquiry that been launched into the above incident.
4. Please provide details of the results of any autopsies conducted in this case.
5. Will those injured by security forces and the family members of those killed be compensated?

Jordan: Death in Custody of `Ala' Abu `Utair

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 23 October 2007 sent with the Special Rapporteur on the question of torture and the Special Rapporteur on freedom of religion or belief

We would like to bring to your Government's attention information we have received regarding Mr `Ala' Abu `Utair and approximately 2100 prisoners held at Swaqa correction and rehabilitation centre. According to the information received:

In July and August 2007, they were subjected to repeated beatings with truncheons, electrical cables and steel balls attached to steel chains by about 300 officers of a "Special Police Force". The officers entered the cells, dragged out the prisoners and beat them in the adjacent courtyard. The prisoners did not receive any medical care following these beatings, although some were severely injured. Several prisoners were unable to walk because of injuries to their legs. Two prisoners, one of them `Ala' Abu `Utair, died as a result of the ill-treatment.

During the same period, the Muslim prisoners who had beards were forcibly shaved and subjected to other restrictions, e.g. they were not allowed to leave their cells 24 hours per day.

Starting in September, the situation improved slightly in terms of access to food and access to family members, exercise. The prison director, named Majed, was removed. However, reportedly, no investigations into the allegations of the deaths in custody or torture were initiated and none of the perpetrators were brought to justice.

Without in any way implying any conclusion as to the facts of the case, we recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right not to be arbitrarily deprived of one's life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. This means that a State is presumed to be responsible for the death of the person under international law, unless clear evidence to the contrary emerges, explaining how the death occurred. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (1990)): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would also like to draw your Government's attention to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, "Stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;".

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

Rights as well as of the International Covenant on Civil and Political Rights. In its general comment No. 22 (1993) on Article 18 of the ICCPR, the Human Rights Committee stressed that “[p]ersons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint” (para. 8).

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

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

Kenya: Shoot-to-kill order Issued by the Internal Security Minister

Violation alleged: Deaths due to excessive use of force by law enforcement officials

Subject(s) of appeal: General

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 31 January 2007

I would like to bring to the attention of your Excellency's Government the reported remarks of Internal Security Minister, Mr John Michuki made on 26 January 2007 at the passing out parade of police recruits at the GSU Training School, Embakasi. It was reported that Mr Michuki stated that police would no longer arrest armed criminals since they have ill intentions when they illegally acquire weapons. He reportedly stated "how do you arrest someone who has a gun and is ready to fire? Or will you arrest him when you are already dead?" I also note that the Minister reportedly made a similar shoot to kill order to the security forces in March 2005 shortly after his appointment in office.

I am fully aware of your Government's commitment to protect its citizens from criminal violence in the country and the challenges that the police face in carrying out their work. It is my understanding that at least six police officers have been shot by armed criminals in January 2007 and that in the same period the police have killed 46 suspected criminals in Nairobi.

In this connection, I would like to refer your Excellency's Government to the its obligations reflected in a variety of international instruments, including especially Article 6 of the International Covenant on Civil and Political Rights which provides that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

I would also like to remind the Government of your Excellency that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, provide that law enforcement officials, in carrying out their duties, shall as far as possible apply non-violent means and shall only use force in exceptional cases including self-defense or defense of others against the imminent threat of death or serious injury. Such force must be proportional to these objectives, the seriousness of the crime and must minimize damage and injury. Force may only be used when less extreme means are insufficient. Arbitrary or abusive use of force and firearms by law enforcement officials is to be punished as a criminal offence under national law. Besides, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

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

1. Is the report concerning the shoot to kill order accurate? If so, has the Government taken any action to countermand the policy?

2. Please provide statistics on the numbers of alleged criminals killed by the police over the past two years together with statistics on the number of police officers killed during the same period.
3. Please provide detailed information on the terms of the current rules of engagement that the police have to follow in their search for potential armed criminals, including details on the above-mentioned policy allowing officers to “shoot to kill” suspected armed criminals.

Kenya: Killings during Post-Election Violence

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

Subject(s) of appeal: At least 682 people

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 21 January 2008

I would like to bring to your Government’s attention information I have received alleging that over 600 killings by armed mobs have occurred in Kenya subsequent to the announcement on 30 December 2007 that the 27 December 2007 presidential and parliamentary elections were won by President Mwai Kibaki. In addition, according to allegations received, at least a further 82 people have been shot and killed by Kenyan police. According to the information received:

Following claims that President Mwai Kibaki’s election victory was the result of vote tampering, supporters of the opposition Orange Democratic Movement (ODM) and ODM leader Mr Raila Odinga staged protests across Kenya. The protests quickly became violent, and spread through the Rift Valley and the west of Kenya. Supporters of the ODM (primarily members of the Luo tribe) reportedly chased away those people (primarily members of the Kikuyu and Kisii tribes) thought to be Kibaki supporters, and looted or burned Kikuyu shops and homes. Violent reprisals have also been committed against suspected ODM supporters or Luo tribe members by Kibaki supporters. I have received allegations that during the ongoing post-election violence, over 600 politically and ethnically motivated killings were committed by mobs armed with machetes, swords, and bows and arrows. A further 250,000 people, primarily from the Rift Valley, are said to have been displaced from their homes.

In particular, I have received allegations of the following specific killings:

- 1 January 2008: Up to 50 people, mostly Kikuyu tribe women and children fleeing mobs armed with machetes, were intentionally burnt to death in the Kenya Assemblies of God Pentecostal church, 8 kilometers from the town of Eldoret in the Rift Valley. According to allegations received, the attackers dragged mattresses into the church doused in petrol and set them alight, and the entrance to the church was blocked to prevent people escaping.
- 19 January 2008: ODM supporters killed eight people in a makeshift refugee camp in the Rift Valley village of Kipkelion, 180 kilometres northwest of Nairobi.
- 20 January 2008: Three people were murdered with machetes in the Nairobi neighborhood of Huruma.

I have also received allegations that during some incidents, Kenyan police failed to protect people who were being violently attacked. Thus, for example, according to information received, Peter Kyalo was attacked and his arm was cut off by a group armed with machetes. In another incident, 50 people attacked Dominic Owour, a 23-year-old man, and attempted to cut off both of his arms. According to the allegations, police watching both incidents did not intervene.

In addition to the killings by armed mobs, Kenyan police are alleged to have used live ammunition to disperse opposition protesters, killing people in Nairobi, Mombasa, Kisumu, and Eldoret. I have received allegations that unarmed individuals not taking part in protests or any form of criminal activity were killed by police gunfire. In addition, I have received allegations that Kenyan police have been given a “shoot to kill” order against those participating in banned demonstrations against the results of the election. According to information received, at least 82 people have been killed by police since protests began at the end of December 2007. In three days (16-18 January 2008) of opposition protests, over 25 people were killed by police. The following specific instances have been reported to me:

- 16 January 2008: Five people were shot and killed by police in Kisumu. One of the men was allegedly shot at close range while unarmed and moving away from police. Another of those killed was Salim Hamed, a 13-year-old boy shot three times in the back by police. According to allegations received, the Kisumu hospital reports a total of 44 deaths in Kisumu due to police bullets.
- 17 January 2008: Seven people were shot by police in Mathare and surrounding slums in Nairobi.
- 18 January 2008: At least seven people were shot and killed by police in the Kibera slum, including a 15-year-old girl, Rosa Otieno. Another person was killed by police in Mombasa.
- 19 January 2008: Seven people were shot and killed by police – four in Nyairobi village, and three in Londiani.

Without wishing to prejudge the accuracy of this information, I would like to recall the relevant human rights standards. Human rights law protects every individual's inherent right to life and security (Article 6, International Covenant on Civil and Political Rights (ICCPR); Article 3, Universal Declaration of Human Rights (UDHR)). Article 6 of the ICCPR provides that the right to life and security shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Your government has a due diligence obligation to protect the lives of persons within your territory and jurisdiction from attacks by other persons within your territory (*Jiménez Vaca v Colombia*, UN Human Rights Committee, 25 March 2002, paragraph 7.3). I would also like to bring to your Government's attention the duty to thoroughly, promptly and impartially investigate killings, and to prosecute and punish all violations of the right to life. As reiterated by the 61st Commission on Human Rights in Resolution 2005/34, all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", and "to identify and bring to justice those responsible".

With respect specifically to those cases in which it was reported to me that Kenyan police were responsible for killing civilians, I would recall the international human rights law that governs the use of force by law enforcement officials. Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials (Basic Principles), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9). And, unless it would unduly risk death or serious harm to law enforcement officers or other persons, law enforcement officers must give suspects the opportunity to surrender and must employ a graduated resort to force (Principles 4 and 10, Basic Principle; *Suárez de Guerrero v Colombia*, UN Human Rights Committee, 31 March 1992, paragraph 13.2). Your government's laws must "strictly control and limit the circumstances" in which law enforcement officers may resort to lethal force (*Baboeram v Suriname*, UN Human Rights Committee (4 April 1985), paragraph 14). A general "shoot to kill" order violates these standards. As I have previously reported, "the rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes" (Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc E/CN.4/2006/53, 8 March 2006).

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

1. Post-election mob violence: How many persons have been killed in the post-election violence in Kenya? What measures were and are being taken by your

Government to protect people from violence by armed mobs? In particular, please explain the circumstances of the Elderot church killings.

2. Investigation and prosecution: What efforts have been undertaken to promptly and thoroughly investigate the alleged killings by armed mobs? Have the alleged perpetrators been detained and charged? What measures will be taken to ensure their prosecution? Please indicate specifically what measures have been taken to hold to account those responsible for the Elderot church killings.

3. Killings by police: With respect to alleged killings by your law enforcement officials, please: (a) clarify what laws and regulations govern the use of force by police; (b) detail the investigations which have been or will be conducted into killings by police; (c) indicate whether any police have been charged or prosecuted for killing civilians; (d) explain what processes are or will be put in place to independently and comprehensively investigate the alleged killings by your law enforcement officials.

4. Shoot to kill order: Was a “shoot to kill” order ever issued by your Government or any police officials? If so, please provide the precise terms of the “shoot to kill” order. Specifically, please indicate: (a) over what period of time and in what circumstances the order applied; (b) who issued the order; (c) to whom the order gave authority to “shoot to kill”; (d) any limits on the use of force provided by the order.

Kyrgyzstan: Death in Custody of Tashkenbai Moidinov

Violation alleged: Death in custody

Subject(s) of appeal: 1 male (foreign national)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Kyrgyzstan with respect to the death of Tashkenbai Moidinov. The SR would request that the Government continues to update him on the status of the criminal proceedings.

Allegation letter dated 17 October 2006

I would like to draw your Excellency’s attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 141-143), relating to the death in custody of **Tashkenbai Moidinov** in December 2004 at a regional militia office in Bazar-Kurgan. In its response dated February 2005, your Excellency’s Government informed that a criminal case investigation had been open by the Bazar-Korgon procurator’s office.

As further indicated in my observations, I would be grateful if your Government could provide me with information relating to the results of the above mentioned investigation. I would also like to know if any penal or disciplinary sanctions were

imposed and if any compensation was provided to the families of M. Tashkenbai Moidinov.

Response from the Government of Kyrgyzstan dated 22 March 2007

On 24 October 2004, T. Moidinov, a detainee being held in administrative custody, hanged himself in the premises of the internal affairs authorities of Bazar-Korgon district, in the Jalal-Abad province of Kyrgyzstan. During the inspection of the scene of the incident and of Mr. Moidinov's body, no traces were found of a struggle, nor were there any visible injuries on the body of the deceased.

Following the incident, on 19 November 2004, the Bazar-Korgon district procurator's office in Jalal Abad province instituted criminal case No. 166-04-261 under articles 316 (Dereliction of duty) and 304, part 2 (Abuse of official position) of the Code of Criminal Procedure of the Kyrgyz Republic against the superintendent in the duty office of the internal affairs authorities of Bazar-Korgon district in Jalal-Abad province. On 10 December 2004, the investigation into the criminal case was concluded and the case was referred to the court for trial. On 21 September 2005, the criminal case was heard by the Suzak district court in Jalal Abad province and, under the provisions of article 66 of the Kyrgyz Code of Criminal Procedure (Reconciliation of the parties), the proceedings were discontinued. No compensation was paid to the family and relatives of the deceased. On 5 September 2006, the Jalal Abad provincial court heard a cassational appeal from T. Asanov, lawyer acting for the applicant Z. Moidinova, widow of T. Moidinov, and, under the provisions of article 373-6 of the Kyrgyz Code of Criminal Procedure, the decision of the Suzak district court was overturned and the case was reopened. On 9 October 2006, the criminal case was referred under the supervisory procedure to the Supreme Court of the Kyrgyz Republic and, to date, has not been returned for further consideration.

Kyrgyzstan: Death in Custody of Akylbek Sakeev

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 15 May 2007 sent with the Special Rapporteur on the question of torture

We would like to bring to your Government's attention information we have received concerning Mr **Akylbek Sakeev**, aged 48, from Naryn. According to the information received:

He was arrested on 22 November 2006 at 19.15 by two officers from the city department of Naryn police at his home on suspicion of having stolen a calf. He was taken to the City Department of Internal Affairs of Naryn, where he was heavily beaten on his head, the torso and legs with hands and objects by Major Kozhombardiev Bakyt, Major Tilebaldiev Bakyt, Captain Chapaev Taalajbek, Senior Lieutenant Toknalaiev Altynbek and a fifth officer. Three hours later a local ambulance was called to the police station, which found Mr Sakeev in a coma. On 23 November 2006 he died in hospital without waking up. The autopsy showed that 5 ribs were broken, as well as both legs below the knees, that his skull was fractured (with a piece of a skull bone damaging the brain) and that his internal organs were damaged. He also had bruises all over the body.

The police officially stated that, when they found Mr Sakeev on the street, he was already in a coma. However, in late November or early December 2006, they unofficially offered 6000 USD to the victim's family, which they accepted.

On 25 November 2006, the city prosecutor's office for Naryn opened an investigation into the death of the victim. In early January 2007 a forensic examination of the report from the initial autopsy was performed, which concluded that the damage to the head, which caused Mr Sakeev's death, had been sustained prior to the detention. Based on the result of that examination, combined with a vague testimony of the victim's brother obtained in unknown circumstances, the Prosecutor's Office concluded that the cause of the Victim's death was natural and therefore the case was closed "for lack of evidence" on 22 January 2007. Subsequently, the regional prosecutor's office examined this decision as a matter of their routine review of all dismissed cases. On 14 February 2007, it returned the case back to Nary city prosecutor's office requiring an additional investigation into the facts of the death of the victim.

It was reported that alleged perpetrators continue to work in the police and one of them recently received a promotion.

While we do not wish to prejudge the accuracy of these allegations, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right not to be arbitrarily deprived of one's life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, I would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbatov v. Uruguay*, communication no. 84/1981 (1990)):

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

We would like to draw your Government’s attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts. Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

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

Liberia: Death of Tuakerseh Gborgan following a Trial by Ordeal

Violation alleged: Impunity

Subject(s) of appeal: 1 female

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 30 July 2007 sent with the Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the question of torture and Independent expert on technical cooperation and advisory services in Liberia

We would like to bring to your Government's attention information we have received concerning 37 persons, among them Ms Oldlady Parker Geieh, aged 85, Ms Kargonal Jargue, aged 75, Ms Tuakarseh Gborgan, aged 70, Ms Martha Suomie, aged 49 and Mr Zaye Bonkre, aged 75, resident in Boutou, Nimba County. According to the information received:

In September 2006, the Buotou Town Chief, Mr George Olathe Morris, the Zone Chief, Mr Deemie Zoue, and the Youth Leader, Mr George Tomah, demanded money from various members of the community to cover the fees of a trial by ordeal practitioner, payment of which would save the victims from being subjected to the trial.

34 women and three men, who were unable to pay the fee demanded, were detained by local authorities in Buotou. A team of witchdoctors from Cote d'Ivoire, headed by Mr Gbah Anthone, was hired to perform the trial by ordeal. The town authorities later claimed that the persons to be subjected to the trial by ordeal had committed witchcraft and were responsible for causing a lack of development and employment in Buotou.

The 37 persons were then severely assaulted and forced to sit outside in the rain and sun and were denied food (only some received some food from their relatives). Their heads were shaved and mud and chilli pepper was rubbed on their heads, into wounds caused during the beating and into the women's vaginas. They were threatened that they would be subjected to the "sassywood procedure", wherein the victim must prove his or her innocence by consuming poison without dying, and were ordered to confess to being witches.

They were released on 24 October 2006 following the intervention of LNP and UNPOL.

On 24 December 2006, Tuakerseh Gborgan died in Sanniquillie, apparently as a result of the injuries sustained during the trial by ordeal. Hunger and lack of adequate medical treatment may also have contributed to her death.

On 24 November 2006, police arrested eight people alleged to have participated in this procedure: Gbah Anthone, Tiah Francis, George Olathe Morris (Town Chief), Deemie Zoue (Zone Chief), Anthony Blah, Wesley Mobai, John Ola Alfred and Soun Wonue. The eight men were charged with aggravated assault on 27 November 2006 and released on bail by the Sanniquillie Magistrates' Court the same day. The Youth Leader was not arrested. On 22 June 2007, Gbah Anthone was indicted for murder in the Nimba County Circuit Court. However, on 16 July, he was acquitted after the

Circuit Court Judge granted a defence motion to dismiss the case on the ground that there was inadequate evidence to prove the charge beyond a reasonable doubt. In his decision, the Judge referred to the lack of a valid coronial report and forensic investigation. There is neither a morgue nor a forensic practitioner in Nimba County. The prosecution case had also been weakened by a medical report it had tendered which was inconclusive in its findings regarding the deceased's condition at the time she first sought medical treatment. That medical report had been prepared by the son-in-law of one of the men who ordered the trial by ordeal, raising further concerns that the available medical evidence was neither impartial nor comprehensive. None of the other alleged perpetrators has been brought to justice as of now.

In accordance with the Executive Law, the Ministry of Internal Affairs (MIA) has responsibility for overseeing “tribal government” and “administering the system of tribal courts” in Liberia. The MIA’s role includes the issuance of licences to sassywood practitioners and herbalists, among others, and it would appear that in practice this includes authorizing instances of trial by ordeal. Use of poison sassywood was publicly declared illegal at the end of 2006, but, in spite of the fact that the Ministry of Justice has initiated some prosecutions against practitioners of sassywood, it is reported that the Government has failed to send a strong and unambiguous message regarding the illegality of all forms of trial by ordeal and other arbitrary practices. Furthermore, MIA officials still authorize such ceremonies to go ahead. For example, in the case of Mr. Varney Quoy, a farmer and security guard who lives in the Po River area of Montserrado County, MIA officials allegedly were going to authorize a trial by ordeal to take place, until the Solicitor-General was seized of the matter and the case was transferred to the Office of the County Attorney in Monrovia. Judging by the description given by MIA personnel to UN personnel, the intended ceremony appeared to resemble a trial by ordeal in that there was a threat of serious harm as punishment, the procedure was arbitrary and it was to take place in the context of witchcraft or supernatural phenomena. It further appears that Mr Varney had been deemed to be guilty and the aim of the ceremony was not to determine guilt or innocence but was an attempt to prevent alleged future crimes. He was to take an oath and consume a substance that would punish him in the future if he broke that oath. The ceremony, which would not be permitted even under the Revised Rules and Regulations of the Hinterland, clearly violates the human rights guarantees contained in the Constitution and the international human rights treaties ratified or acceded to by Liberia.

It is also reported that trial by ordeal that is of a “minor nature” and does not “endanger life” is permitted by Art. 73 of the Regulations. Article 2 of those Regulations provides that they are to be applied to “such areas as are wholly inhabited by uncivilized natives”. The discriminatory basis of the Regulations is a breach of human rights guarantees under the Constitution and international treaties, such as the International Covenant on Civil and Political Rights, which has been ratified by Liberia. Moreover, the Regulations, which are subordinate legislation, are contrary to provisions of a variety of national Acts, including the Judiciary Law, the Penal Code and the Criminal Procedure Law.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would like to draw your Government's attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to refer your Excellency's Government to article 14 of the International Covenant on Civil and Political Rights, and in particular: "1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

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: "-5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out

in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victims or the families of the victims.
6. Please indicate the measure taken by your Government to prevent that further trials by ordeal take place in the country, in accordance with applicable national and international law.

Libyan Arab Jamahiriya: Death in Custody of Ismail Al Khazmi

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Libyan Arab Jamahiriya has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Allegation letter dated 28 June 2007 sent with the Special Rapporteur on the question of torture

We would like to bring to the attention of your Excellency's Government information we have received regarding Mr. Ismail Al Khazmi, who allegedly died in custody of your Excellency's Government subsequent to his arrest on 17 June 2006.

According to the information we have received:

Mr. Ismail Al Khazmi is the son of Mr. Ibrahim Aboubekr Al Khazmi and Ms. Rahma Mohamed Al Daqel, born in 1976 in Beni El Walid, 100 kilo meters South of Tripoli. He was an engineer working in the oil fields of AGB GAS in Melita (Sebrata).

According to the information we have received, on 17 June 2006 at 11 a.m. agents of the internal security services (Al Amn Addakhili) arrested Mr. Al Khazmi at his place of work. According to the statements of his co-workers the detaining officers did neither show an arrest warrant nor inform him of the reasons for his arrest. It is not known where he was taken by the security officers. His parents repeatedly sought information on his fate, but the authorities refused to acknowledge that he had been detained and thus to provide any information.

It would appear, however, that Mr. Ismail Al Khazmi was held at Asseka prison in Tripoli, where he was repeatedly severely ill-treated. On 29 June 2006, he was again beaten and then suspended from the ceiling in the presence and under the direction of an Al Amn Addakhili officer. Three further Al Amn Addakhili officers were present. In the afternoon of 29 June 2006, Mr. Al Khazmi was taken away from the prison in a Peugeot car, unconscious but still alive. He has not been seen again thereafter.

On 1 May 2007, Mr. Ibrahim Aboubekr Al Khazmi, the father of Mr. Ismail Al Khazmi, was summoned to the office of the commander of Asseka prison, Mr. Mustapha Al Makeef. The prison commander told him that his son was dead and asked him to sign a document in order to obtain the mortal remains of Ismail Al Khazmi. The father asked for explanations concerning the death of his son and, not having received a reply that would satisfy him, insisted that an autopsy be carried out by a physician of his choice. The prison commander refused this request. Mr. Ibrahim Aboubekr Al Khazmi therefore retained a lawyer, who requested formally that an autopsy be carried out and filed a complaint against those responsible for Ismail Al Khazmi's death.

The prosecutor general summoned the Al Amn Addakhili officers on duty at Asseka prison at the time of Ismail Al Khazmi's detention there to obtain their statements. The Secretary of the Popular Committee on General Security, who is the Secretary in charge of the ministry of interior, however, opposed their appearance and refused to authorise an inquiry.

As of today, notwithstanding the threats and other forms of pressure received, Mr. Ibrahim Aboubekr Al Khazmi refuses to pick up his son's mortal remains at the morgue of the Tripoli hospital as long as the circumstances of his son's death are not clarified.

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

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

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

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

We urge your Excellency’s Government to live up to its obligation under international law to conduct an inquiry into the circumstances surrounding the death of Mr. Ismail Al Khazmi expeditiously, impartially and transparently. This would appear to require lifting any obstacles to the proceedings reportedly initiated by the prosecutor general. It also would require an independent medical examination of the corpse, appropriate disciplinary action against any officials involved, and the payment of compensation to Mr. Al Khazmi’s family.

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

1. Are the facts alleged in the above summary of the case accurate? When and where did Mr. Al Khazmi die?
2. Please provide the details, and where available the results, of any medical examination of Mr. Al Khazmi’s mortal remains. Please explain how the forensic medical expert(s) who carried out the autopsy was chosen and whether the choice has been accepted by the victim’s family.
3. Please provide the details, and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to this case.
4. Please provide the full details of any prosecutions which have been undertaken in relation to the death of Mr. Al Khazmi and of any sanctions, administrative and penal, imposed on persons found to be responsible for his death.

5. Please indicate whether compensation has been paid to the family of Mr. Al Khazmi.

Malaysia: Killing of Five Migrant Workers

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

Subject(s) of appeal: 5 persons (foreign nationals)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Malaysia in relation to the deaths of Yunus bin Ahmed and Mr. Darmanto.

Letter of allegation dated 6 March 2006 sent with the Special Rapporteur on the human rights situation of migrants

We would like to draw the attention of your Excellency's Government to information we have received alleging the killing of five migrant workers by agents from the Department of Immigration belonging to a volunteer service known as "RELA".

According to the information received:

The bodies of five migrant workers were recovered from a lake in Selayang area of Malaysia's capital city of Kuala Lumpur from 11 to 13 February 2006 following a raid by the RELA immigration officials. Two of the five bodies were recovered from the lake - a flooded open cast-mining pit - late on 11 February 2006 and the remaining three on 12 and 13 February 2006.

According to eyewitnesses, in the early hours of 11 February 2006, the Immigration Department conducted a raid on Selayang's open market where many migrants work. Migrant workers were heard screaming for help while RELA officers shouted that they would kill the migrants if they ran away.

We are aware that the Malaysian government has issued a statement in which it refuted these allegations and explained that the operation carried out by RELA officers went smoothly and involved only the checking of the documents of foreign workers, some of whom managed to run away.

Our understanding is that autopsies were conducted on four of the bodies on 13 February 2006 while the fifth one, identified as being Mr. Zaw Oo, a Burmese migrant, was not taken to hospital and was buried immediately. Reports indicate that the bodies showed no signs of stab or slash wounds and that they were too badly decomposed to be able to tell whether they had been beaten with batons, such as those carried by RELA volunteers.

The overall circumstances of these deaths and the way in which they have been presented by some observers serve to emphasize the importance of ensuring that a thorough investigation be undertaken and that it not be left to the officials involved or those working closely with them. Ideally an independent investigation, based on thorough police and forensic work would be undertaken, and the results made public.

In this regard we note the importance attached by international human rights law to investigations being conducted in a prompt and effective manner in such situations (CHR resolution 2004/37, para 6; Human Rights Committee, General Comment 31, para. 15).

Similarly, Principle 9 of the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that the purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

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

1. Are the facts alleged in the above summary accurate? Please provide the names and casualties that resulted from the operation.
2. Given the allegations that the "RELA" personnel are members of a volunteer reserve who reportedly lack adequate training, command and accountability, please provide details about their chain of command, especially in relation to their relationship with the Malaysian immigration department.
3. What were the aims of this operation?
4. Please provide a copy of the rules of engagement that were in effect during this operation.
5. Please provide the details and where available the results, of any investigation, medical examinations, and judicial or other inquiries that may have been carried out by the competent authorities in relation to this case as well as the steps taken to ensure that the provisions contained in the aforementioned international legal instruments are respected.

Response from the Government of Malaysia dated 16 May 2007

For your information, RELA (*Ikatan Relawan Rakyat* or the People's Volunteer Corps) was formed on 11 January 1972 as a Government security apparatus. The primary objective of RELA is to provide opportunities for citizens, on a voluntary basis, to become members of an agency which was formed to assist, maintain and safeguard peace and security in the country. It has proven to be beneficial in assisting the

Government in the fight against communist insurgency during the 1970's and 1980's. RELA units are present in almost all districts, making it suitable for mobilisation during security efforts.

Organisationally, RELA is a division while the Immigration Department is a Department under the Ministry of Home Affairs, Malaysia. Following an increase in the influx of illegal immigrants into the country in recent years, the relevant laws were amended in 2005 to empower RELA officers to complement the enforcement unit of the Immigration Department. The amendments allow RELA officers to conduct operations to arrest illegal immigrants in the country. The operations codenamed Operasi Tegas (Operation Stem) was launched in March 2006.

Regarding the operation conducted by RELA on 11 February 2006, the facts of the case show that at approximately 0200 hours on the said day, a team of RELA personnel conducted checks on the travel documents of migrant workers within the area of the Selayang Wholesale Market in the state of Selangor. The check was conducted and concluded without any untoward incident, although a number of illegal immigrants managed to escape arrest.

On 15 February 2006, the RELA headquarters in Putrajaya received a telephone call from the British Broadcasting Corporation (BBC) enquiring about the death of five illegal immigrants at an unused mining pond near the Selangor Wholesale Market. On the same day, RELA lodged a report at the Police Station in Jinjang, Kuala Lumpur and on 16 February 2006 at the Kuala Lumpur Hospital.

The Royal Malaysia Police had conducted a thorough investigation into the matter and confirmed that two bodies and not five bodies as alleged were found at the scene. The deceased were:

Mr. Yunus bin Ahmed (aged 29, a Myanmar citizen holding UNHCR card 05/MLS/02124); and Mr. Darmanto (aged 18, an Indonesian citizen holding identification card number 1.176/2008/10/AS/2005)

Mr. Yunus bin Ahmed's body was found following a complaint lodged by a member of the public on 12 February 2006 at 1315 hours concerning a body in the unused mining pond. A police team which was dispatched to the scene arrived at 1420 hours and found the body of a man almost fully submerged at the edge of the water. The body showed neither apparent signs of external cuts nor any signs of struggle. The body was identified by Mr. Maung Soe Miynt Aung (passport number 531972), a relative of the deceased. The deceased was released to Mr. Aung on 13 February 2006 for funeral rites.

Mr. Darmanto's body was also found following a complaint lodged by a member of the public on 12 February 2006 at 2010 hours concerning a body in the same unused mining pond. A police team which was dispatched to the scene arrived at 2035 hours and found the body of a man floating face down at the edge of the mine. The body also showed neither apparent signs of external cuts nor any signs of struggle. The body was identified by Mr. Budiman (passport number AA 400612), brother of the deceased. The deceased was released to Mr. Budiman on 15 February 2006 for funeral rites.

Prior to the release of the two bodies, the Kuala Lumpur Hospital conducted an autopsy on 13 February 2006 and reported that the bodies of Mr. Yunus bin Ahmed and Mr. Darmanto were "generally in a decomposed state". "However, body parts were generally intact. There were no obvious external injuries. On external examination, there was no obvious skull or skeletal fractures. The estimated time of death was 3 to 5 days prior to post-mortem examination". The cause of death could not be ascertained due to the decomposed state of the bodies.

Based on the medical examinations, the death of the two deceased took place between 8 and 10 February 2006. The autopsy report ruled out any linkage between the deaths and the checks carried out by RELA on 11 February 2006.

On the alleged death of a Mr. Zaw Oo, I wish to inform you that the authorities in Malaysia do not have any records of such person or any indication linking him to the checks conducted on 11 February 2006.

I wish to assure you that it is the policy of the Government of Malaysia to remain committed to the fundamentals of human rights, regardless of citizenship. In the case of RELA officers undertaking checks on illegal immigrants, a series of intensive training is first administered to the volunteer corps to ensure its members abide by the relevant laws. For this particular group, the training included:

- The Passport Act/Immigration Enforcement Procedures Course at the Malaysian Immigration Academy in Port Dickson, Negeri Sembilan in July 2004;
- The Passport Act/Immigration Enforcement Procedures Advanced Course at the three Regional RELA Training
- The Passport Act/immigration Enforcement Procedures Advanced Course at the three Regional RELA Training Centres in November 2004. A total of 25,000 RELA officers on active duty took part in this course; and
- Simulation trainings prior to the launching of Operation Stern in March 2005 which comprised 64 sessions of dry runs and 86 sessions of exercises.

I append herewith a copy of the following legislation and regulation relevant to the actions taken, for your further perusal:

- Emergency (Essential Powers) Act 1964;
- Essential (Ikatan Relawan Rakyat) (Amendment) Regulations 2005; and
- Standing order issued by the Director-General of RELA (in the Malay language - Arahan Pentadbiran Ketua RELA Malaysia).

On the basis of the investigation conducted, it is obvious that the allegations in your summary are without basis.

Maldives: Death in Custody of Hussein Salah

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Maldives.

The Special Rapporteur would request that the Government of the Maldives provide him with the report of investigations of the police service, the human rights commission and the parliament.

Allegation letter dated 21 June 2007 sent with the Special Rapporteur on the question of torture

We would like to bring to the attention of your Excellency's Government information that we have received regarding the alleged death in custody of Mr. Hussein Salah, aged 29, sand-miner, national identity card n. A020700, resident at Naazukeege, Hithadhoo Island, Addu Atoll. He also was a well-known opposition activist.

According to the information we have received:

Mr Hussein Salah was arrested on Hithadhoo Island on 9 April 2007. Subsequently he was transferred to Male, where he arrived in the evening of 12 April. There he was held at the Alhoulhu Vehli Detention Centre, where, according to witnesses, he was severely beaten for several hours resulting in injuries to his face and legs. He died on 13 or 14 April. His dead body was discovered floating in the inner harbour of Male on 15 April 2007.

Whereas at first there had been attempts to bury the body without a death certificate, in the end a Government employed doctor did issue one. Initially the family's request for an independent forensic examination was refused. However, following protests, on 20 April the body was transferred to Colombo, Sri Lanka, where a Judicial Medical Officer examined the body. However, the report that resulted from this examination contradicted earlier findings of Maldivian police and reportedly lacks credibility because of inexplicable delays and because the Maldivian Government allegedly intervened.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Government's attention to the fundamental principles applicable under international law to this case. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, we would like to recall the

conclusion of the Human Rights Committee in a custodial death case (Dermot Barbato v. Uruguay, communication no. 84/1981 (1990)):

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

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

We understand that an autopsy on the body of Mr. Hussein Salah has been conducted and that a preliminary investigation has been initiated. We urge your Government to complete the inquiry into the circumstances surrounding the death of Mr. Hussein Salah expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate Mr. Hussein Salah’s family.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of investigations, medical examinations, and judicial or other inquiries which have been carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive, please explain why.

3. Please provide the full details of any prosecutions which have been undertaken against the police officers allegedly responsible for Mr. Hussein Salah's death. Have penal, disciplinary or administrative sanctions been imposed on them?
4. Please indicate whether compensation has been paid to the family of Mr. Hussein Salah.

Response of the Government of the Maldives dated 20 September 2007

Mr Hussain Salah (Naazukeege, Addu Atoll Hithadhoo) was taken into police custody on 9 April in Addu Atoll on suspicion of possessing drugs. Mr. Salah was an individual who had prior criminal convictions for banned substance abuse and burglary. Although drugs were found at his arrest location, no further drugs were discovered during the body search. However, Mr Salah's urine tested positive for opiates. Mr Salah was kept in custody for further investigation and he was transferred to Malé by boat as is the normal practice. The journey from Addu to Malé takes about 2 days by boat. On the way to Malé, when the vessel was in transit in the Island of Gadhdhoo (South Huvadhu Atoll) Mr. Salah complained of a headache and requested to be taken to the health centre on the Island. Mr. Salah was attended by the doctor at the Gadhdhoo Health Centre who prescribed him medication which was administered to him. On arrival in Malé, Mr. Salah was detained at Atholhu Vehi (Police Custodial Centre) and, following established procedure, was asked about his health and well-being. In response, Mr. Salah noted that he suffered from intermittent headaches. This information was recorded in writing along with Mr. Salah's signature and fingerprint. Mr. Salah was released from custody by the police on the night of 13th of April. Records show that Mr Salah left custody with his personal possessions around 20.10 hours. His mother was notified of his release over the phone.

Response of the Government of the Maldives dated 28 September 2007

The Government replied that with reference to police investigations, Mr. Hussain Salah had been taken into police custody on 9 April 2007 in Addu Atoll on suspicion of possessing drugs. He had prior criminal convictions for banned substance abuse and burglary. Although drugs were found at his arrest location, no further drugs were discovered during the body search. However, Mr. Salah's urine tested positive for opiates. Mr. Salah was kept in custody for further investigation and then transferred to Male' by boat as is normal practice. The journey from Addu to Malé takes about two days by boat. On the way to Male', when the vessel was in transit in the island of Gadhdhoo, Mr. Salah complained of a headache and requested to be taken to the health centre on the island. He was attended by the doctor at the Gadhdhoo Health Centre who prescribed him medication which was administered to him. On arrival in Male', Mr. Salah was detained at Atholhu Vehi (police custodial centre) and, following established procedure, was asked about his health and well-being. In response, Mr. Salah noted that he suffered from intermittent headaches. This information was recorded in writing along with Mr. Salah's signature and fingerprint. Mr. Salah was released from custody by the police on the night of 13 of April. Records show that Mr. Salah left custody with his personal possessions around 9.10 p.m. His mother was notified of his release over the phone. Mr. Salah's body was discovered around 7.45 a.m. on 15 April 2007 floating in the harbour on the south-side of Male'. When the Maldives Police Service received this information, an

investigating team was dispatched to the scene. Since the body was covered in mud, no external injuries were evident on the body. Without further delay, the body was removed and taken to the Indhira Gandhi Memorial Hospital and then transferred to the new Cemetery in Male'. A team of doctors examined the body. During the examination bleeding was noted from the nose and ear as well as swelling of the left cheek. The doctors recommended that a post-mortem be carried out to ascertain the cause of death. The Government wishes to reiterate that it did not attempt to bury the body without a death certificate. On 21 April, following a request by Mr. Salah's family and given that the Maldives did not have the required facilities, an independent post-mortem examination was carried out at the Office of the Judicial Medical Officer in Sri Lanka. The body had been transferred by the Government in order to respond to the request of the family of the deceased. The preliminary findings of the post-mortem concluded that death was caused by drowning. It ruled out the possibility that death had been caused by physical violence. The subsequent report further confirmed these findings. Mr. Hussein Salah was buried on 28 April 2007 in Male'. Copies of the report have been provided to the OHCHR. The Government wishes to reiterate that it did not attempt to intervene in this process. Throughout the process, the Government sought to balance the need to follow due legal process to discover the precise cause of death with the equally important need to be sensitive to and respond to the particular needs of Mr. Salah's family. Further, the Government facilitated at its own expense the transfer to Sri Lanka for the post-mortem examination since the Maldives do not have the facilities nor the trained professionals to conduct this procedure. Representatives of the Human Rights Commission also traveled to Colombo to oversee the process. The Government invited Amnesty International to be present, but they were not able to respond in time. The Maldives Police Service is conducting a full investigation into the death of Mr. Salah. Their findings so far indicate that the death did not happen in custody and that there is no cause to believe that Mr. Salah had suffered any ill-treatment at the hands of Police Officers. Similarly, the Human Rights Commission of the Maldives is conducting a full investigation into the matter. The results have not been published yet. Also, an independent inquiry was carried out by the Petition Committee of the People's Majlis (Parliament). This inquiry focused on procedural matters relating to how the body was dealt with from the time it was discovered until the time it was buried. The Committee found that all parties involved in the case had acted in good faith. There were nonetheless procedural issues that needed to be looked at and improved in the future. The Committee therefore recommended that improved guidelines and regulations be put in place for dealing with cases such as that of Mr. Salah, when there is uncertainty as to cause of death. So far no prosecutions have been undertaken in relation to the case and no compensation has been paid. Finally, the Government reiterated its commitment to the protection and promotion of human rights.

Maroc: Mort en détention de Soulaymane Chouih

Violation alléguée: Mort en détention

Objet de l'appel: 1 homme

Caractère de la réponse: Pas de réponse

Observations du Rapporteur Spécial

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

Lettre d'allégation envoyée le 18 juin 2007 conjointement avec le Rapporteur Spécial sur la torture

Nous souhaiterions attirer l'attention de votre Gouvernement sur des informations reçues à propos de la mort de M. Soulaymane Chouihi. Selon les allégations reçues:

Le 27 April 2004, M. Soulaymane Chouihi s'est rendu au poste de police de Goulmim dans le cadre d'une enquête ouverte sur le vol de son fusil de chasse. Quelques heures plus tard il a été conduit du poste de police à l'hôpital de Goulmim, où il est décédé le même jour.

Un rapport d'autopsie rédigé le 4 mai 2004 par le Dr. Saïd Louahlia, Directeur de l'Institut de médecine légale au Centre Hospitalier Universitaire de Casablanca, aurait conclu « qu'il s'agit d'une mort violente traumatique secondaire à une hémorragie méningée, suite à un traumatisme crânien récent direct pariétal gauche de nature contondante. [...] » L'autopsie aurait révélé aussi « un traumatisme thoracique récent direct » et des « traces de violences minimales sur le coude droit (écorchures) ». Une deuxième autopsie par une commission composée de trois médecins du Bureau d'Hygiène de Rabat, ordonnée par le parquet auprès de la Cour d'Appel de Goulmim, et exécutée le 11 mai 2004 à la morgue du Bureau d'Hygiène de Rabat, aurait confirmé les conclusions du Dr. Louahlia: « Le décès semble faire suite aux complications d'un traumatisme crânien et thoracique. »

Le 11 mai 2004, le juge d'instruction aurait inculpé trois officiers de la poste de police de Goulmim : M. Hassan Ohaira, M. Mohammed Bordij et M. Mohammed Jabrowni, de « violence volontaire dans l'exercice de leurs fonctions sans intention de donner la mort », et de falsification du procès-verbal, et aurait demandé leur détention. Les trois officiers auraient été renvoyés à la Chambre criminelle de Première Instance auprès de la Cour d'Appel d'Agadir. Durant le procès devant la Chambre criminelle, deux femmes qui avaient déclaré au juge d'instruction avoir vu M. Chouihi vomir dans la cour du poste de police, atteint par une attaque d'épilepsie, auraient rétracté leurs déclarations. Elles auraient expliqué à la Chambre criminelle que ces déclarations avaient été faites sous menace de la part de la police.

Le 15 novembre 2005, la Chambre criminelle aurait jugé coupable M. Hassan Ohaira et l'aurait condamné à 10 ans de prison ferme, tout en acquittant les deux autres inculpés: M. Mohammed Bordij et M. Mohammed Jabrowni. La Chambre criminelle aurait condamné aussi M. Ohaira à payer des réparations aux parents de M. Chouihi (20,000 dirhams chacun) et à la femme et aux enfants (40,000 dirhams chacun).

Le 11 décembre 2006, la Chambre criminelle d'Appel, saisie par M. Ohaira, aurait annulé le jugement de Première Instance et acquitté l'accusé. Il paraît que la Chambre d'Appel aurait donné foi aux déclarations de deux nouveaux

témoins qui avaient déclaré que M. Chouihî souffrait d'attaques d'épilepsie. La Chambre aurait écarté les rapports d'autopsie, en les jugeant insuffisamment argumentés.

Le 14 décembre 2006 les parents de M. Chouihî auraient fait recours à la Cour Suprême pour contester la décision de la Cour d'Appel. La décision de la Cour Suprême est attendue dans les prochaines semaines.

Bien que nous n'ayons pas encore obtenu une copie de la décision de la Chambre d'Appel, nous voudrions attirer l'attention de votre Gouvernement sur certaines préoccupations que nous avons reçues à cet égard. Un des deux nouveaux témoins présentés par la défense de M. Ohaira à la Chambre d'Appel et qui aurait déclaré que M. Chouihî souffrait d'attaques d'épilepsie, serait un criminel condamné avec un casier judiciaire pour faux témoignage. La Chambre d'Appel aurait aussi ignoré le témoignage des femmes qui avaient rétracté leurs déclarations au juge d'instruction selon lesquelles M. Chouihî aurait été saisi d'une attaque d'épilepsie. En plus, la décision de la Chambre d'Appel indiquerait que plusieurs témoins avaient déclaré que la victime souffrait d'épilepsie sans identifier ces témoins. Nous sommes préoccupés par le fait que la Chambre d'Appel aurait décidé d'écartier les deux rapports d'autopsie qui établissaient que M. Chouihî est décédé à cause d'un « traumatisme crânien et thoracique récents » comme insuffisamment expliqués. A la base des préoccupations précitées nous exprimons la crainte que M. Chouihî, pourrait être décédé à cause des coups infligés par un ou plusieurs officiers de police et que, bien que l'enquête et la procédure judiciaire aient été lancées si rapidement et efficacement par les autorités en 2004-2005, cette affaire puisse finir par n'être pas élucidée et aucun responsable du décès de M. Chouihî ne soit identifié.

Sans vouloir à ce stade préjuger du bien-fondé des plaintes portées à notre attention, d'autant plus que nous n'avons pas reçu de copies des décisions judiciaires rendues dans cette affaire (qui sont elles mêmes sub judice devant la Cour Suprême en ce moment), nous voudrions attirer l'attention de votre Gouvernement sur les principes fondamentaux de droit international régissant les cas de décès en détention. L'article 6 du Pacte international relatif aux droits civils et politiques établit le droit à ne pas être arbitrairement privé de la vie. L'article 7 du même Pacte et l'article 1 de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants interdisent la torture et les peines ou traitements cruels, inhumains ou dégradants.

Les rapports d'autopsie et les déclarations des témoins indiqueraient que M. Chouihî avait été vu vivant pour la dernière fois lorsqu'il était sous l'autorité des forces de police. Lorsqu'un État détient une personne, il est tenu de protéger ses droits avec une diligence accrue. Dans ces circonstances, le droit international des droits de l'homme établit une présomption irréfragable de responsabilité de l'Etat pour les violations du droit à la vie et le droit à l'intégrité physique et morale (voir aussi le récent rapport du Rapporteur spéciale sur les exécutions extrajudiciaires, sommaires ou arbitraires à l'Assemblée générale, A/61/311, paragraphe 49 à 54). La raison de cette présomption a été énoncée par le Comité des droits de l'homme dans l'affaire *Dermit Barbato c.*

Uruguay (communication no. 84/1981 du 21/10/1982, paragraphe 9.2). La conclusion du Comité des droits de l'homme se lisait comme suit :

« Le Comité ne peut se prononcer de façon définitive sur la question de savoir si Hugo Dermitt s'est suicidé, s'il a été poussé au suicide ou s'il a été tué par des tiers pendant sa détention, mais il est obligé de conclure qu'en tout état de cause, les autorités uruguayennes sont responsables, soit par action, soit par omission, de n'avoir pas pris les mesures voulues pour protéger la vie de l'intéressé, comme le paragraphe 1 de l'article 6 du Pacte leur en fait l'obligation. »

Comme nous l'avons déjà mentionné, nous reconnaissons que dans cette affaire, les autorités ont rapidement pris des mesures appropriées visant à assurer l'accomplissement des obligations qui découlent de l'article 12 de la Convention contre la torture, qui requiert que les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis, et de l'article 7 de la même Convention, qui requiert que les Etats parties soumettent les auteurs présumés d'actes de torture à leurs autorités compétentes pour l'exercice de l'action pénale. Nous faisons donc appel à Votre Gouvernement afin qu'il assure que les efforts entrepris pour « déterminer la cause, les circonstances et le jour et l'heure du décès, le responsable et toute pratique pouvant avoir entraîné le décès, ainsi que tout ensemble de faits se répétant systématiquement » (principe 9 des Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions) aboutissent, pour assurer que les responsables de la mort de Soulaymane Chouihy soient traduits devant la justice et sanctionnés pour leurs actes, et pour assurer à sa famille une juste compensation. En faisant cet appel à Votre Gouvernement nous sommes bien conscients de l'importance de l'indépendance de la justice au Maroc et nous ne souhaitons certainement pas suggérer une intervention incompatible avec cette indépendance.

Il est de notre responsabilité, en vertu du mandat qui nous a été confié par la Commission des droits de l'homme et par les résolutions de l'Assemblée générale et assumé par le Conseil des droits de l'homme, de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ce cas au Conseil des droits de l'homme, nous serions reconnaissants à votre Gouvernement de donner ses observations sur les points suivants :

1. Les faits tels que relatés sont-ils exacts?
2. Veuillez nous fournir copies des décisions de première instance et d'appel rendues dans cette affaire.
3. Veuillez nous tenir au courant de la décision de la Cour Suprême et de tout autre développement dans cette affaire.
4. Veuillez nous indiquer si la famille de la victime a été indemnisée.

Mexico: Muertes durante manifestaciones en Oaxaca

Violación alegada: Muertes a consecuencia de uso excesivo de la fuerza por fuerzas de seguridad

Persona objeto del llamamiento: 5 hombres (manifestantes)

Carácter de la respuesta: Respuesta cooperativa pero incompleta

El Relator Especial agradece al Gobierno de México por la información que ha proporcionado relativa a la muerte de Alejandro García Hernández, José Jiménez Colmenares y Lorenzo San Pablo Cervantes. El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

Carta de alegación del 30 de octubre de 2006 mandada con el Relator Especial sobre la tortura

En el ejercicio de nuestros mandatos respectivos, deseamos poner en su conocimiento las denuncias que hemos venido recibiendo con relación a violaciones de derechos humanos cometidas por presuntos miembros de las fuerzas de seguridad del Estado, durante el mes de octubre de 2006 en Oaxaca. Según la información recibida:

El 14 de octubre, varios desconocidos dispararon contra un grupo de simpatizantes de la Asamblea Popular del Pueblo de Oaxaca (APPO) que se encontraban protestando. El Sr. Alejandro García Hernández murió como consecuencia de los disparos y otras dos personas resultaron heridas. Según nuestras fuentes, uno de los desconocidos que disparó contra los manifestantes perdió su billetera en la huida, incidente que habría permitido identificarlo como miembro del ejército.

Por otro lado, el 8 de octubre, el estudiante Pedro García García habría quedado en libertad bajo fianza después de permanecer una semana detenido en una prisión de Tlacolula, estado de Oaxaca. Según se nos informa, mientras se encontraba detenido, el Sr. Pedro García García fue golpeado en repetidas ocasiones y amenazado de violación. Al Sr. García se le detuvo por robo y porte de arma, pero este último cargo fue posteriormente retirado. Se alega que los cargos en contra del Sr. García son falsos y se sospecha que pueden habersele imputado por motivos políticos.

Nos gustaría señalar que no es la primera vez que recibimos denuncias sobre este tipo violaciones de derechos humanos en el estado de Oaxaca. Precisamente, 12 de Septiembre de este año, enviamos una carta a su Gobierno con relación a la muerte de los Señores José Jiménez Colmenares y Lorenzo San Pablo Cervantes debido a disparos efectuados por presuntos miembros de las fuerzas de seguridad. En esa oportunidad también se puso en conocimiento de su Gobierno la información que recibimos sobre los supuestos malos tratos o torturas a las que habrían sido sometidos los Señores Ramiro Aragón Pérez,

Elionai Santiago Sánchez, Juan Gabriel Ríos y Renato Cruz Morales mientras se encontraban bajo custodia policial.

A través de una carta enviada el 22 de Agosto de 2006, el Gobierno de su Excelencia nos informó que intentaba solucionar por la vía del diálogo el conflicto social que se vive en el Estado de Oaxaca, y que se encontraba implementando acciones tendientes a favorecer el acercamiento entre el Gobierno de Oaxaca, el magisterio e integrantes de la APPO (párr. 8).

Quisiéramos dejar constancia de nuestro agradecimiento al Gobierno de Su Excelencia por la información proporcionada y saludar sus esfuerzos para encontrar una solución pacífica a este conflicto. Sin embargo, le recordamos que aun no hemos recibido respuesta a nuestra carta del 12 de septiembre y que continuamos recibiendo nuevas denuncias provenientes de Oaxaca.

En estas circunstancias, y sin implicar de antemano una conclusión sobre los hechos, hacemos un llamado al Gobierno de Su Excelencia para que nos proporcione información detallada sobre las medidas adoptadas para garantizar la investigación de las violaciones mencionadas en esta carta y en aquella del 12 de septiembre, así como el procesamiento y castigo de las personas responsables de dichas violaciones. Igualmente, quisiéramos conocer las acciones implementadas por su Gobierno para que este tipo de incidentes no se repitan.

A este respecto, nos gustaría llamar la atención de su Gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamamos la atención sobre los principios 9 y 19 según los cuales, los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

Finalmente, nos gustaría llamar la atención de su Gobierno sobre el párrafo 1 de la Resolución 2005/39 de la Comisión de Derechos Humanos, en el que se “Condena todas las formas de tortura y otros tratos o penas crueles, inhumanos o degradantes, que están y seguirán estando prohibidos en todo momento y en todo lugar y que, por lo tanto, no pueden justificarse nunca”. A este respecto, llamamos la atención sobre los artículos 12 y 7 de la Convención contra la Tortura, y sobre el párrafo 3 de la Resolución 2005/39 de la Comisión de Derechos Humanos. El párrafo 3 de dicha resolución estipula que “todas las denuncias de torturas u otros tratos o penas crueles, inhumanos o degradantes deben ser examinadas sin dilación y de manera imparcial por las autoridades nacionales competentes y que quienes instigan, ordenan, toleran o perpetran actos de tortura, incluidos los funcionarios encargados del lugar de detención donde se determine que se ha cometido el acto prohibido, deben ser declarados responsables de sus actos y severamente castigados”.

De acuerdo con el mandato que nos ha entregado la Comisión de Derechos Humanos, mandato reforzado por las resoluciones pertinentes de la Asamblea General, es nuestra responsabilidad intentar conseguir clarificación sobre los hechos llevados a

nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos referidos?
2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a la muerte de los Señores Alejandro García Hernández, José Jiménez Colmenares y Lorenzo San Pablo Cervantes, así como los malos tratos o torturas a las que habrían sido sometido los Señores Pedro García García, Ramiro Aragón Pérez, Elionai Santiago Sánchez, Juan Gabriel Ríos y Renato Cruz Morales.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del gobierno de Mexico del 24 de abril de 2007

Alejandro García Hernández

La Fiscalía Especial para Asuntos Magisteriales de la Procuraduría General de Justicia del Estado, dio inicio a las averiguaciones previas 67(FEPAM)/06 por el delito de homicidio calificado en contra del Sr. Alejandro Garcia Hernández. Una vez que se tengan mayores datos se harán de su conocimiento.

Pedro Garcia Garcia

Fue detenido en flagrancia por elementos de la Policía Auxiliar Bancaria, Industrial y Comercial (PABIC) en el momento de estar cometiendo el delito de robo en perjuicio de Abel Reyes Mijangos.

La PABIC solicitó a la Directora del Reclusorio Femenil de Valses Central, de Tiacolula, Oaxaca, que recibiera a Francisco Pedro Garcia Garcia, en calidad de detenido.

El 1° de octubre de 2006 la PABIC puso a Pedro Garcia Garcia a disposición del Ministerio Público y se inició la averiguación previa 1536/PME/06 por el delito de robo simple.

Debido a que le fue encontrada un arma de fuego, clasificada como prohibida por la Ley Federal de Armas de Fuego y Explosivos, la Primera Agencia Investigadora Especializada en Delitos contra la Salud y Violación a la Ley Federal de Armas de Fuego y Explosivos inició una averiguación previa (AP/PG OAX/1/097-D/2006), en

la que el Sr. Pedro Garcia Garcia aparece como probable responsable del delito de portación de armas de fuego prohibidas.

A efecto de ampliar la información contenida en este punto en breve se remitirá copia del certificado médico del 1° de octubre de 2006 expedido por el Departamento Médico del Reclusorio Femenil de de Valles Centrales, Tlacolula, Oaxaca.

El 08 OCT 2006 Pedro Garcia Garcia obtuvo su libertad bajo caución.

José Jiménez Colmenares

El 10 de agosto de 2006, como uno de los actos de protesta realizados por el magisterio y el grupo autodenominado Asamblea Popular del Pueblo de Oaxaca (APPO), se llevó a cabo una manifestación.

Aproximadamente a las 19:00 horas, se suscitó una riña entre manifestantes y particulares. Derivado de estos hechos, resultó herido por proyectil de arma de fuego el Sr. Eleuterio José Jiménez Colmenares, quien fue atendido en un hospital particular en donde falleció.

La Procuraduría General de Justicia de Oaxaca (PGJOAX) inició una investigación por el delito de homicidio, tentativa de homicidio y lesiones, en contra de quien o quienes resulten responsables.

Después del tiroteo, los manifestantes capturaron a cuatro hombres sospechosos de participar en los hechos antes referidos y posteriormente los pusieron a disposición de la Delegación de la Procuraduría General de la República en el Estado.

Ramiro Aragón Pérez, Juan Gabriel Rios y Elionel Santiago Sánchez

Fueron detenidos el 10 de agosto de 2006, por elementos de la Policía Preventiva del Estado, durante uno de los recorridos de seguridad y vigilancia efectuados en la Agencia Municipal de San Felipe del Agua, Centro Oaxaca.

Al ser revisados por los elementos de la policía preventiva, éstos se percataron de que los detenidos presentaban huellas de sangre y golpes. Al ser cuestionados al respecto, aquéllos manifestaron que habían tenido una riva y que corrían para ponerse fuera del alcance de sus agresores. En la detención les fueron aseguradas armas de uso exclusivo del Ejército, Armada y Fuerza Aérea Nacional.

Debido a que se encontraban tomadas las instalaciones de la PGJOAX, por integrantes de la Sección XXII del SNTE y la APPO y a que no se encontraba laborando el personal de ninguna de las Agencias del Ministerio Público, fue necesario trasladarlos a la cárcel municipal de la población de Ejutla de Crespo, Oaxaca.

Al encontrarse bloqueada la carretera federal que conduce a la citada población, fue necesario buscar un camino alternativo, accediendo por la población de San Dionisio Ocoatepec, con destino a San Baltasar Chichicapan, para llegar a Ejutla de Crespo, lugar en el que previa certificación médica, realizada por personal de los Servicios de Salud de Oaxaca, fueron puestos a disposición de la autoridad ministerial.

El 12 de agosto de 2006, la autoridad jurisdiccional recibió en el penal de Zimatlán de Álvarez, Oaxaca, a Ramiro Aragón Pérez a quien se le investiga por los delitos de portación de arma de fuego y cartuchos del uso exclusivo del Ejército, Armada y Fuerza Aérea Nacional.

En esa misma fecha la autoridad jurisdiccional decretó su detención judicial y el 18 de agosto de 2006 le fue dictado auto de formal prisión por estimarse probable responsable en la comisión del delito antes referido.

Elionai Santiago Sánchez y Juan Gabriel Rios se encuentran libres por haber obtenido su libertad bajo caución.

Lorenzo San Pablo Cervantes

El 22 de agosto de 2006 la autoridad ministerial de Oaxaca inició una averiguación previa para establecer la identidad y paradero de quien o quienes resulten responsables del delito de homicidio cometido en agravio del Sr. San Pablo Cervantes.

La causa de muerte del Sr. Lorenzo San Pablo Cervantes se debió a la herida producida por un proyectil de arma de fuego que le ocasionó lesiones pulmonares y hemorragia.

El 25 de agosto de 2006, se tenía programada la realización de una diligencia de inspección ocular en el lugar de los hechos, cuyo objetivo era obtener mayores datos que permitieran el esclarecimiento de los hechos. No fue posible realizarla ya que simpatizantes o militantes de APPO restringieron el acceso al lugar.

Por su parte, la Procuraduría General de Justicia del Estado de Oaxaca inició una averiguación previa (1008/(H.C.)/2006) con motivo del homicidio del Sr. Lorenzo San Pablo Cervantes, misma que se encuentra en integración.

Germán Mendoza Nube, Leobardo López Palacios y Eliel Vésquez Castro

Germán Mendoza Nube, fue detenido el 9 de agosto de 2006, en cumplimiento de la orden de reaprehensión librada en su contra por su probable responsabilidad en la comisión del delito de tentativa de homicidio calificado.

El mismo 9 de agosto de 2006, fue internado en el Reclusorio Regional de Miahuatlán de Porfirio Díaz, Oaxaca, lugar en el que continúa recluso por habersele dictado auto de formal prisión dentro de dos procesos penales por la comisión del delito de tentativa de homicidio calificado y robo calificado con violencia a las cosas y daños.

Al momento de su detención, el Sr. Mendoza Nube fue valorado por peritos médicos legistas de la PGJOAX y a su ingreso al Centro de Readaptación Social (CERESO) de Miahuatlán de Porfirio Díaz fue valorado por personal médico de la Dirección de Prevención y Readaptación Social, que recomendó darle un seguimiento especial debido a la diabetes mellitus que padece. Por ello, se le brindaron todas las condiciones médicas para la atención de su salud, e incluso el 10 de agosto de 2006

fue excarcelado para brindarle atención médica especializada, trasladándolo al Hospital General de la Ciudad de Puebla.

Renato Cruz Morales

No existe antecedente de que haya sido detenido por ninguna corporación policíaca del Estado. Por lo tanto, no hay registro de que hubiera sido internado en ninguno de los centros penitenciarios del país.

Mexico: Muertes durante manifestación en Oaxaca

Violación alegada: Muertes a consecuencia de uso excesivo de la fuerza por fuerzas de seguridad

Persona objeto del llamamiento: 3 hombres

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Mexico por la información que ha proporcionado relativa al estado de sus investigaciones con relación a la muerte de Alberto Jorge Lopez Bernal y Bradley Wheyler. El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

Carta de alegación del 8 de noviembre de 2006 mandada con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión

De acuerdo con la información recibida:

El 29 de octubre de 2006 Alberto Jorge López Bernal murió a consecuencia del impacto que sufrió por una bomba de gas lacrimógeno en el estómago, durante su participación en una manifestación de la Asamblea Popular de los Pueblos de Oaxaca (APPO). El 27 de octubre Bradley Wheyler, camarógrafo de la agencia de prensa "Indymedia" murió cuando cubría una manifestación de la mencionada APPO a consecuencia de un disparo en el pecho, supuestamente disparado cuando miembros de la policía municipal, de la alcaldía, y de la seguridad pública abrieron fuego contra una barricada levantada por los manifestantes. Durante los enfrentamientos del mismo 27 de octubre, Osvaldo Ramírez, fotógrafo del diario "Milenio", resultó herido en la pierna en un tiroteo.

Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos hacer un llamamiento al Gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos, y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la

libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

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

Consideramos apropiado también hacer referencia a la resolución 2005/38 de la Comisión de Derechos Humanos, la cual insta a los estados a que garanticen que las víctimas de violaciones al derecho a la libertad de expresión puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia, así como los actos terroristas, dirigidos contra los periodistas, incluso en situaciones de conflicto armado, y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad.

Dicha resolución también reafirma que el derecho de reunión pacífica y de asociación, además del derecho a participar en la dirección de los asuntos públicos guardan una estrecha relación con el derecho a la libertad de opinión y expresión, y en este contexto llama a los Estados a que adopten todas las medidas necesarias para poner fin a las violaciones de estos derechos, y creen las condiciones necesarias para impedir tales violaciones.

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

A este respecto, nos gustaría llamar la atención de su Gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamamos la atención sobre los principios 9 y 19 según los cuales, los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción. Es nuestra responsabilidad de acuerdo con el mandato que nos ha entregado la Comisión de Derechos Humanos, y reforzado por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

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

2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a las muertes de Alberto Jorge López Bernal y Bradley Wheyley así como con relación a la herida de Osvaldo Ramírez.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de Mexico del 12 de febrero de 2007

Según la información allegada a los Relatores Especiales, los Sres. Alberto Jorge López Bernal y Bradley Roland Will murieron en un contexto de violencia, el primero a consecuencia de un impacto de bomba lacrimógena en el estómago y el segundo a consecuencia de un disparo de arma de fuego en el pecho. El Sr. Osvaldo Ramirez, por su parte, supuestamente resultó herido durante su participación en una de las manifestaciones de la Asamblea Popular de Oaxaca (APPO).

Por lo que se refiere al Sr. Osvaldo Ramírez, fotógrafo del diario "El Milenio", el Gobierno del Estado de Oaxaca informó que después de una búsqueda exhaustiva, no encontró registro alguno de denuncia presentada o investigación iniciada por el hecho que se refiere. En ese sentido, no está en posibilidad de proporcionar información en torno a estos sucesos.

En cuanto a la muerte del Sr. Alberto Jorge López, la Procuraduría General de Justicia del Estado de Oaxaca informó que ya ha iniciado una averiguación previa 1258(C.R) 2006. Una vez que se cuente con información sobre los avances de dicha investigación se harán de su conocimiento de manera inmediata.

Por lo que hace a la muerte de Bradley Roland Will (camarógrafo de Indymedia), efectivamente, el 27 de octubre de 2006, fue privado de la vida cuando videogrababa un enfrentamiento entre miembros de la Asamblea Popular de Pueblos de Oaxaca (APPO) y vecinos del Municipio de Santa Lucia del Camino, Oaxaca.

A continuación, se presentan avances de la investigaciones realizadas dentro de la averiguación previa numero 1247(C.R.)2006, iniciada el 27 de octubre de 2006, en contra de quienes resulten responsables, a saber:

El 1° de diciembre de 2006 se ejerció acción penal en contra de los indiciados de nombres Abel Santiago Zarate y Orlando Manuel Aguilar Coello como probables responsables en la comisión del delito de homicidio calificado de Bradley Roland Hill, con la agravante de ventaja.

Las diligencias y acciones realizadas para lograrlo consistieron en:

- Realizar autopsia a Bradley Roland Will. De su cuerpo, fueron rescatadas ojivas pertenecientes a un arma de fuego del calibre 9 milímetros, clasificada como una arma para uso exclusivo del Ejército, Armada y Fuerza Aérea, conforme a dispuesto en el artículo 11 inciso b) de la Ley Federal de Armas de fuego y explosivos.
- Analizar los videos de las empresas televisivas "Televisa" y "TV Azteca", cuyos corresponsales captaron el momento en que se desarrollaron los hechos en los que perdiera la vida Bradley Roland Will.
- Inspeccionar el lugar en que se desarrollaron los hechos.
- Realizar un dictamen químico en el cual se rastreó líquido hemático (sangre) en la playera que vestía Bradley Roland Will al momento en que murió.
- Realizar la prueba de presencia de nitratos de potasio (prueba de Walker) en una playera color negro de Bradley Roland Will.
- Tomar las declaraciones de los testigos presenciales de los hechos.
- Realizar la prueba de balística.
- Realizar dictamen de criminalística, planimetría, mecánica de lesiones y mecánica de hechos.

Con la finalidad de establecer si existe competencia federal en la investigación de los hechos, el Ministerio Público Federal inició por instrucciones de la Fiscalía Especial para la Atención de Delitos cometidos contra Periodistas, una averiguación previa independiente a la de la Procuraduría General de Justicia del Estado.

Durante el desarrollo de las investigaciones se determinó que Bradley Roland Will, de nacionalidad estadounidense, ingresó al país con calidad migratoria de turista sin cumplir con los requisitos que la ley fija para obtener la calidad migratoria de corresponsal.

Se realizaron las gestiones necesarias ante las autoridades de los Estados Unidos de Norteamérica, a efecto de que la empresa "Indymedia" proporcione a la FEADP el video original y la cámara de filmación que llevaba Bradley Roland Will al momento de su muerte.

Una vez que se concluya el proceso penal seguido en contra de los probables responsables se estará en posibilidad de determinar su responsabilidad penal y en su caso imponerles las sanciones correspondientes.

Myanmar: Death in Custody of Maung Chan Kun

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Allegations rejected but without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Myanmar. However, the SR notes that the suggestion that Maung Chan Kun died of malaria is not responsive to allegations that his body had a hole at the back of his head and bruising on his face, neck, and forearms.

Allegation letter dated 12 March 2007 sent with the Special Rapporteur on the question of torture

We would like to bring to your Excellency's attention information we have received regarding the death in custody of Mr. **Maung Chan Kun**. According to information received:

Mr Chan Kun was arrested at his home in the Irrawaddy Delta Region by the police during the night of 11 January 2007. The next morning the family of Mr Chan Kun went to the Pantanaw Township hospital upon being advised about his whereabouts by the police. Mr Chan Kun was reportedly already dead, and he had a hole at the back of the head. There was bruising from his neck to the back of his ears, to the sides of his face and forearms. Mr Chan Hun was found lying on a wooden bed frame with one arm apparently chained to it.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Government's attention to the fundamental principles applicable under international law to this incident. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right not to be arbitrarily deprived of one's life. Article 7 ICCPR and Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment proscribe torture and inhuman or degrading treatment.

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, I would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermi Barbato v. Uruguay*, communication no. 84/1981 (1990)):

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

We respectfully request that your Government ensures that the death of Mr. Chan Kun is promptly, independently and thoroughly investigated, in accordance with the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions. According to these Principles all States have “the

obligation (...) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, as reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4). The Commission added that this includes the obligation “to identify and bring to justice those responsible, (...) to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to (...) prevent the recurrence of such executions”.

Furthermore, we would like to draw your Government’s attention to articles 12 and 7 of the Convention against Torture. Article 12 requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Government’s attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights. Paragraph 3 stresses that “all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture”.

It is our responsibility under the mandate provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters in relation to the case referred to above:

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

Response from the Government of Myanmar dated 22 May 2007

The Government informed that Maung Chan Kun was sentenced on 30 October 2006 to two years’ imprisonment in Maubin Prison for cheating and dishonestly inducing donations from others while he was in monkhood (sections 295(A) and 420 of the

Penal Code). On 13 December 2006, he escaped during a transfer from Maubin Prison to Pantanaw Prison. On 11 January 2007, the Pantanaw Police found him again. He was seriously ill from malaria and was immediately sent to Pantanaw Hospital for treatment, however he died on the same day in hospital.

Myanmar: Deaths during Demonstrations in September 2007

Violation alleged: Deaths due to excessive use of force by law enforcement officials

Subject(s) of appeal: Number of persons unknown

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 28 September 2007 sent with Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on freedom of religion or belief, Special Rapporteur on the question of torture, Special Rapporteur on the situation of human rights in Myanmar and Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to reports we have received indicating that, in the course of the past week or more, the military has dispersed demonstrations, peacefully initiated by Buddhist monks, in Yangon and other cities by use of force, including teargas and beatings. According to the information received:

The armed forces also have fired indiscriminately into the crowds, thereby killing and injuring a significant number of persons.

The mandate holders have also received allegations that raids on at least six monasteries have resulted in numerous monks being beaten and arrested. About 200 monks are said to be detained in two monasteries in Yangon alone.

In the light of these allegations, the mandate holders appeal to your Excellency's Government not to use excessive force on the protesters. Excessive or disproportionate use of force can amount to cruel and degrading treatment and could, under certain circumstances, also amount to torture.

The mandate holders also appeal to the Government to adhere to international human rights norms when arresting persons. In particular, they seek clarification over allegations of beatings of monks in the recent raids on a number of monasteries. Additionally, in light of the allegations, concern is expressed over the well-being of the arrested monks. In this context, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights.

We would also like to draw your Government's attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the monks mentioned above is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

In this connection, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring your Excellency's attention to the following provisions, and in particular:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

- article 6 points b) and c) which provides that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matter.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

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

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary accurate?
2. Please provide the details, and where available the results, of any investigations, and judicial or other inquiries carried out in relation to these events. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

Nepal: Deaths of Reena Rasail, Subhadra Chaulagain and Tasi Lama

Violation alleged: Deaths due to attacks or killings by the security forces

Subject(s) of appeal: 2 females, 1 male (juvenile offenders)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of Nepal with respect to the death of Tasi Lama. However, the Special Rapporteur notes that the information provided does not contain details on the charges brought against those accused in relation to Tasi Lama's death or on the death sentences imposed on those individuals.

The Special Rapporteur would also request that the Government of Nepal provide him with the results of the investigations initiated in relation to the deaths Reena Rasail and Subhadra Chaulagain.

Follow-up letter dated 17 October 2006 to an urgent appeal sent on 3 March 2004

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 141-143), relating to killings by security forces in the village of Pokharichauri in March 2004. In its response dated 8 March 2005, his Excellency Government informed that the central RNA Investigation team was investigating the deaths of Reena Rasail and Subhadra Chaulagain. As further indicated in my observations, I would be grateful if your Government could provide me with information relating to the results of the above mentioned investigation. I would also like to know if any penal or disciplinary sanctions were imposed and if any compensation was provided to the families of the victims. I would also be grateful if I could also receive clarification regarding the case of Tasi Lama which I have already brought to your attention.

Response from the Government of Nepal dated 5 June 2007

The study of the files of the Court of inquiry and the General Court Martial of the case concerning Tashi Lama's death reveals that when the security forces had an encounter with Mr. Lama in the Pokharichauri area of the Kabhre District on February 12, 2004, he tried to run away in a suspicious manner. Search of his bag revealed Maoist documents and detonators. As he continued to display unusually suspicious behavior, he was shot dead on the spot. Leaving the dead body behind, the security forces headed towards their base.

While returning to the army barrack, the same security forces were ambushed in a landmine planted by the CPN (Maoist) on the Sun Koshi Bridge in Dolalghat. One civilian died; another civilian sustained loss of eyes; one personnel of the Nepal Police was wounded; and three individuals of the Nepal Army sustained minor injuries.

On charges of failure to bring Mr. Lama to the barrack safely, creating a situation that led to shooting, and leaving the dead body behind without completing necessary legal formalities and informing the individuals/authorities concerned, the security forces involved in the incident were meted out the following punishments:

- a. The then chief of Shri Sher Barrack Lt Col. Karmendra Limbu was reprimanded.

b. The then Deputy Chief of the Barrack Major Sher Singh Bista was awarded a one-year promotion forfeiture for his inability to complete the Court of Inquiry in a satisfactory manner.

c. Team Commander of the operation Lieutenant Saroj Basnet of Shri Sher Barrack was sentenced to a four-month imprisonment and a three-year promotion forfeiture.

d. Jamadar Dewan Thapa Magar of the same Barrack, who had already resigned, was sentenced to a 4-month imprisonment

e. Hudda Sher Bahadur Ranabhat of the same Barrack was sentenced to a 4-month imprisonment

f. Amaldar Kaji Bahadur Karki of the same Barrack is still a deserter and an arrangement has been made to take a stern action against him by the Court Martial once he is arrested.

g. Pyuth Bal Bahadur Shrestha, Pyuth Jagendra Pyakurel, private Khet Raj Tamang, Private Deepak Nepali and Private Lila Prasad Bima are still deserters, once they report or once they are arrested, an investigation shall be made to take necessary action against them.

Follow-up letter dated 17 July 2007

I am writing in reference to your correspondence of 5 June 2007 regarding the case of Tashi Lama. I would note my appreciation for the attitude of constructive dialogue with which your Government has approached my efforts to clarify the various cases that I have brought to your Government's attention in the course of carrying out my mandate.

On that basis, I would observe that the information provided regarding the case of Tashi Lama raises some of the same concerns that have arisen in other cases that I have brought to your Government's attention, such as that of Maina Sunuwar (A/HRC/4/20/Add.1, page 226). In particular, are the punishments being imposed on members of the military proportionate to the gravity of the crimes committed? If they are not proportionate then the conclusion to be drawn would be that a situation of relative impunity exists.

With a view to clarifying this matter in my next report to the Human Rights Council, I would be grateful for your cooperation and observations on the following matters:

1. What were the precise charges brought against each of the individuals?
2. Was the use of lethal force itself — as opposed to various related actions — found to be unlawful? If not, why not and what was the basis for bringing other charges?
3. On what basis were the various punishments determined? In this case, as in other cases that your Government has provided information on, the terms of imprisonment

have numbered in months rather than years. I would appreciate information on the factors which account for the brevity of these sentences.

4. How long did each of the individuals spend in pretrial detention?

5. Please provide a copy of the referenced “files of the Court of Inquiry and the General Court Martial”? I understand that these documents may be written in Nepali.

Response from the Government of Nepal dated 10 September 2007

The Permanent Mission of Nepal informed that the contents of the letter have been forwarded to Kathmandu with a request for information on these cases. Any information received in this regard shall be duly communicated to the Special Rapporteur.

Nepal: Death Threats against Journalist Rajendra Karki

Violation alleged: Death threats and fear of imminent extrajudicial execution

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

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur (report 2006)

The Special Rapporteur appreciates the information provided by the Government of Nepal.

Follow-up letter dated 17 October 2006 (to an urgent appeal sent on 25 October 2004)

I would like to draw your Excellency’s attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 159-160), relating to death threats by police officers against journalist **Rajendra Karki** in October 2004. In its response dated 1 April 2005, his Excellency Government informed that the police officer who threatened Mr. Karki had been identified and that he was safe in his residence in Khalanga, Jajarkot. As indicated in the case-related observations I have made in my report, I would be grateful if your Government could provide me with information relating to any penal or disciplinary sanctions taken against the person believed responsible.

Response from the Government of Nepal dated 16 February 2007

Upon an inquiry by the concerned entities of the Government of Nepal it has been revealed from the local residents that journalist Karki and Police Constable Krishna Bahadur Khatri entered up to an extent of argument while the latter inquired the former as a part of his picket duty in October 2004 at Khalanga 2, Jajarkot. Nothing beyond this fray has been recorded and no case has been filed to the concerned police authorities about the incidence. Constable Khatri was then transferred to a remote

Police Post Narakot, Jumla district from where he resigned from his job one year ago in December 2005. Journalist Karki is safe at his residence in Khalanga, Jajarkot.

Niger: Exécutions extrajudiciaires par les forces armées

Violation alléguée: Morts dues à des exécutions des forces armées

Objet de l'appel: Au moins 21 personnes

Caractère de la réponse: Pas de réponse

Observations du Rapporteur Spécial

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

Lettre d'allégation envoyée le 21 janvier 2008 avec le Rapporteur spécial sur la situation des droits de l'homme et des libertés fondamentales des populations autochtones

... en relation avec de récents cas d'exécutions extrajudiciaires de personnes, et notamment de membres de la communauté Touareg, qui seraient survenus au nord du pays.

Selon les informations reçues:

Depuis octobre 2007, au moins 21 personnes, la majeure partie d'entre eux appartenant à la communauté Touareg, auraient été abattues de manière extrajudiciaire dans les régions du nord du pays. Les rapports indiquent la responsabilité directe des forces armées dans ces actes.

Le premier de ces actes aurait eu lieu le 1 Octobre 2007, quand les Forces Armées auraient arrêté un convoi de cinq véhicules près de la frontière avec l'Algérie. Les passagers furent obligés d'abandonner leurs véhicules, et séparés selon leur couleur de peau. 12 personnes de peau plus claire, supposés Touaregs, auraient été séparées du groupe par les militaires, qui les auraient abattus. 10 des personnes tués auraient été identifiés comme Zeyda ag Badi, Ahmadu ag Moussa, Ghoumour ag Ahmad, Mohamed ag Akarfa, Ismaghil ag Akam, Rhissa ag Attaher, Bikim ag Ilyas, Akloua ag Hama, Oumra et Lahcen

Le même jour, toujours selon les rapports reçus, la même unité des Forces Armées se serait dirigée vers une tente de Touaregs aux alentours de la piste entre Assamakka et Arlit. Les soldats se seraient emparés des occupants, entre cinq et dix personnes en tout, dont les noms n'ont pu être identifiés.

Le 22 novembre 2007, quatre personnes, M. Bachir Mouhamad, M- Mariko Kané, M. Oukhoudane Algha, M. Hamad Ibrahim, éleveurs et jardiniers de la communauté Touareg locale, auraient été arrêtées par la Gendarmerie au village de Tchintébizguint, à 30 km à l'ouest d'Agadez, à la suite de

l'explosion d'une mine. Alors que les gendarmes voulaient interroger ces suspects, des éléments des Forces Armées se sont emparés de ces quatre personnes. Leurs corps auraient été retrouvés cinq jours plus tard dans une fosse commune. Selon les rapports, les corps portaient des traces de balles au cœur, au front et à l'oreille.

Le 9 Décembre 2007, sept personnes, y compris deux commerçants arabes, Ibrahim Sidi Amar et Osmane Sidi Rali, ainsi qu'un cuisinier, un mécanicien et deux chauffeurs d'ethnies Touareg et Haoussa qui rentraient à Agadez dans leurs véhicules ont été arrêtées sur la route par les forces de sécurité nigériennes. Leurs familles qui les attendaient à Agadez auraient vu arriver leurs véhicules conduits par des militaires. Ils auraient alors tenté d'obtenir des informations concernant les membres de leurs familles. Après avoir longuement insisté, les militaires leur auraient confirmé les décès des 7 personnes, et les auraient conduits à l'endroit où ces sept personnes auraient été enterrées. Selon les allégations, des personnes qui ont identifié les corps auraient témoigné que les victimes portaient de nombreuses marques de brûlures de cigarettes et de coups de ceintures ainsi que de multiples impacts de balles au visage et à la poitrine.

Il est allégué que ces exécutions extrajudiciaires pourraient avoir eu lieu en représailles aux attaques lancées par le mouvement d'opposition armé Touareg Mouvement des Nigériens pour la justice (MNJ), dans le contexte de la reprise des activités armées en février 2007.

Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous voudrions attirer l'attention du Gouvernement de votre Excellence sur le droit à l'intégrité physique et mentale de la personne sus-mentionnée. Ce droit est consacré notamment aux articles [citer les articles pertinents des conventions]. [Codes d'allégations du mandat].

Dans le cas où vos enquêtes appuient ou suggèrent l'exactitude des allégations susmentionnées, nous prions votre Gouvernement de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés de l'(des) individu(s) mentionné(s), de diligenter des enquêtes sur les violations perpétrées et de traduire les responsables en justice. Nous prions aussi votre Gouvernement d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

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

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?
2. Au cas où une plainte a été déposée, quelles suites lui ont été données ?

3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.
4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs de la violence.
5. Le cas échéant, veuillez indiquer si les victimes ont été indemnisées.

Nigeria: Ultimatum from the Joint Task force on the Niger Delta (JTF) to the Leaders of the Ughelli Community

Violation alleged: Death threats and fear of imminent extrajudicial executions

Subject(s) of appeal: General

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 22 January 2007

I would like to draw your Excellency's attention to information I have received regarding the current volatile security situation in Ughelli, Delta State. According to the information I have received:

On Monday, 8 January 2007, Brigadier General Alfred Ilogho, the Commander of the Joint Task force on the Niger Delta (JTF) "Operation Restore Hope" issued a five day ultimatum to the leaders of Ughelli community in Delta State to produce the killers of a soldier and an oil worker, who were killed last week or face the wrath of the military.

I firmly condemn the abduction and murder of the soldier attached to the JTF and of the employee of the Shell Petroleum Development Corporation by youths of Ekuigbo Community, Ughelli while on their way to an oilfield in the area. I also support and call on your Excellency's Government to make every legitimate effort to bring the perpetrators of this heinous crime to justice.

However, I am seriously concerned by the threat made by Brigadier General Alfred Ilogho against the Ughelli community, especially in view of the fact that the community is under siege as soldiers have cordoned off the area. Movement in and out of the area is reportedly difficult, as soldiers have taken so-called strategic positions in the town. Similarly, about two armored tanks and eight Hilux Pickup vans have been sighted around the community.

While I do not wish to prejudge the accuracy of these allegations, they would, if accurate, be extremely disturbing. If in fact any military operation is planned in relation to the Ughelli community, I would appeal to your Excellency's Government to instruct Brigadier General Alfred Ilogho, the Commander of the Joint Task force on the Niger Delta (JTF) "Operation Restore Hope" and its troops, to comply with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These principles note, inter alia, that law enforcement officials should "as far as possible apply non-violent means before resorting to the use of force and firearms" and that "in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life". I would also like to draw your Excellency's attention the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution 34/169 (1979) which more succinctly stresses the limited role for lethal force in all enforcement operations.

If the information received is correct, and an ultimatum was issued which implied the threat of punitive action by the military if the demands were not met by the villagers, this would be an entirely unacceptable method of policing. It is made even more problematic by the conduct of the military in comparable situations which led to major human rights violations as described in my report on Nigeria to the Human Rights Council.

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

1. Are the facts alleged above accurate? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.
2. Please provide any information as to the instructions issued to the military to desist from issuing ultimatums and threats of the type described, even in situations of considerable difficulty in pursuing effective law enforcement.

Nigeria: Deaths of Islamic militants in the Panshekara area

Violation alleged: Deaths due to excessive use of force by law enforcement officials

Subject(s) of appeal: Approximately 25 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent Appeal dated 20 April 2007

I am writing in relation to reports of killings in the course of clashes between a group of Islamic militants and your Government's security forces in the Panshekara area of Kano.

According to the information received:

A group of Islamic militants, numbering up to 300 including women and children, arrived in the Panshekara area of Kano on 17 April 2007 with the intention to avenge the assassination of a Muslim cleric killed in a Kano mosque on 13 April 2007. They attacked a police station and killed at least 12 policemen. Reportedly, a gun battle between the military and the militants ensued. According to statements of a military commander quoted in international media, "many" militants were killed. Other reports indicate that approximately 25 militants were killed, while nine were arrested. Subsequently, the militants reportedly established control over an area of the town. Your Government's armed forces are reported to have cordoned off the area and engaged the militants holed up near some waterworks. The most recent reports indicate that it appears to be unclear whether the remainder of the militant group is still united in defence of a position or has in the meantime dispersed.

Allow me first of all to express unconditional condemnation of the attack against the police station and of the killing of police officers.

As noted above, the reports I have received concerning the events in Kano since 13 April 2007 do not, at this stage, allow me to have a clear picture of the circumstances under which your Government's military forces killed numerous militants, nor of whether the military operations against the militants are ongoing. Nonetheless, and particularly in the light of reports that the militant group includes (presumably unarmed) women and children, I consider it appropriate to bring to your Government's attention the principles governing under international law the lethal use of force in such law enforcement operations.

Article 6 of the International Covenant on Civil and Political Rights, to which Nigeria is a party, provides that no one shall be arbitrarily deprived of his or her life. Article 3 of the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in themselves binding law, provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces facing allegedly violent crowds:

Article 3 states "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." It thus sets forth the twin safeguards of necessity and proportionality in the use of force.

Principle 9 reads:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement and necessary, there must be a “thorough, prompt and impartial investigation” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st session of the Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

In the event that your Excellency’s Government was to consider the rules of international law governing armed conflict applicable to the incident, I would like to recall that international humanitarian law requires parties to an armed conflict to distinguish at all times between combatants and civilians, and to direct attacks only against combatants (Rules 1 and 7 of the Customary Rules of International Humanitarian Law identified by the International Committee of the Red Cross). In the conduct of military operations, constant care must be taken to spare the civilian population. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life (Rule 15). It is at all times prohibited to kill enemy combatants in the power of your Government’s forces (e.g. because they have surrendered or been captured) or persons otherwise placed *hors de combat* (Rules 47 and 89).

It is my responsibility under the mandate provided to me by the Commission on Human Rights, reinforced by the appropriate resolution of the General Assembly, and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the allegations in the above summary of the events accurate? Please describe the attack on the police station and the subsequent offensive by your Government against the militants? How many militants were killed by your Government’s forces? How many unarmed persons? How many of the militants were taken into custody?
2. What were the instructions given to the security forces before and during the operation in Panshekara? How did the security forces ensure compliance with the requirements of necessity and proportionality?
3. Please describe the circumstances under which the deaths of militants and, if any, of civilians occurred in Panshekara and the surrounding area since 13 April 2007.

Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case.

Finally, as I understand that there could be further military operations against the military group (which includes women and children), I urgently appeal to your Excellency's Government to ensure that its security forces conform to the above mentioned principles governing law enforcement operations.

Nigeria: Persecution of Members of the Shia Community in Sokoto State

Violation alleged: Deaths due to attacks or killings by security forces

Subject(s) of appeal: At least 6 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 4 September 2007 sent with the Special Rapporteur on freedom of religion or belief and Special Rapporteur on the right to education

We would like to draw the attention of your Government to information we have received regarding the persecution of members of the Shia community in the Nigerian state of Sokoto.

According to information received:

On 18 July 2007, Mr. Umar Danmashiyya, a Sunni cleric was shot while he was leaving his local mosque. The Shia community, which is a minority in the Nigerian state of Sokoto, has been collectively blamed for the killing of the Sunni cleric. Shia groups were attacked in residential areas by mobs carrying machetes. As of 21 August 2007, more than 70 homes have been destroyed, six Shia members have been murdered and more than 50 women and children are missing. Furthermore, the community's centre, clinic and schools were also destroyed. Subsequent to street fights, the police arrested and detained 115 members of the Shia community, including its leader Mr. Kasimu Rimin Tawaye. Allegedly, those acts were carried out by a combined force of federal military, state police and mobs under police protection who use this assassination to discriminate against the Shia community of Sokoto.

We would like to recall that, as reiterated in Commission on Human Rights resolution 2004/37 on "Extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation ... to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such

executions". This obligation, affirmed also in the jurisprudence of the Human Rights Committee (see the Committee's views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 6 of the International Covenant on Civil and Political Rights.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights.

We would also like to refer Your Excellency's Government to article 26 of the Universal Declaration of Human Rights, as well as article 13 of the International Covenant on Economic, Social and Cultural Rights, ratified by your country in 1993, which consecrate everyone's right to education. In this context we would like to bring your Excellency's attention to the annual report 2005 of the Special Rapporteur on the right to education (E/CN.4/2005/50), where it is stated that security in schools forms part of the human right to education and that security means not only physical, psychological and moral safety but also a right to be educated without interruption in conditions conducive to the formation of knowledge and character development.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. How is the right to education of children living in the affected areas being assured?
5. Is there any plan to reconstruct the destroyed schools? If yes, how and when is this going to be implemented?

Nigeria: Death Sentences of 7 Persons

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 7 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 10 January 2008

I am writing concerning information I have received relating to executions of at least 7 prisoners on death row over the last 2 years.

According to information received:

At least 7 persons convicted in Kano state court were hanged in various prisons in Nigeria:

- 30 May 2006 - Kenneth Ekhone and Auwalu Musa were executed in Kaduna Central Prison. The information I have received alleges that neither man had a lawyer during their trials, and that they were not allowed to appeal against the conviction and sentence.
- 15 June 2006 - Salisu Babuga was executed in Jos prison. It is alleged that the execution was broadcast on radio, and that is how the family became aware of the execution.
- 2006 - At least four men (names unknown) were executed in Enugu prison.

While I do not wish to prejudge the accuracy of the informed received, I would like to refer your Government to the applicable principles of international law. While capital punishment is not prohibited under international law, it is an extreme exception to the fundamental right to life. It may only be carried out in limited circumstances, and after all the guarantees for a fair trial are strictly observed (*Little v Jamaica*, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). In relation to the allegations that Mr Ekhone and Mr

Musa did not have legal counsel at their trials, article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone has the right to legal assistance, and to have legal assistance assigned to him where the interests of justice so require. In relation to the allegations that both men were denied the right to appeal the decision at first instance, article 14(5) of the International Covenant on Civil and Political Rights requires that everyone convicted of a crime has the right to have the conviction and sentence reviewed by a higher court.

With respect to the lack of public notice of these alleged executions, I would like to bring to your Government's attention that resolution 2005/59 (20 April 2005), adopted by the UN Commission on Human Rights, calls upon states to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution. Transparency is one of the fundamental due process safeguards that prevent the arbitrary deprivation of life, and countries have a clear obligation to disclose the details of their application of the death penalty (see Report of the Special Rapporteur on extrajudicial, arbitrary or summary executions, E/CN.4/2006/53/Add.3, 24 March 2006).

I am very concerned that I have received allegations of the application of the death penalty in Nigeria, given that no executions have been officially reported by your Government, and the occurrence of any executions of death row inmates over the last few years was denied by the Nigerian representative to the Third Committee of the UN General Assembly (15 November 2007).

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

1. How many people on death row have been executed in 2006 and 2007? Specifically, did the executions detailed above occur? Please provide names, locations and details of each of the executions of death row inmates which have occurred.
2. With respect to the alleged executions of Mr Ekhone and Mr Musa, were they provided with legal counsel, and were they given an opportunity to appeal their conviction and sentence?
3. What measures will be undertaken in the future to ensure that accurate and timely public reporting of executions of death row inmates takes place?

Pakistan: Death Sentence of Jawed Khan

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 28 February 2007

I would like to draw the attention of your Government to information I have received regarding Mr. **Jawed Khan** who is at imminent risk of execution for the murder of a shop keeper committed when he was under the age of 18. According to the information received:

Jawed Khan was charged in 1996 together with two others and convicted before the anti-terrorism court in Faisalabad on 20 February 1998. It is my understanding that Mr. Waheed Iqbal, who was convicted alongside Khan, was sentenced to death and executed on 9 January 2007. Jawed Khan's appeals against conviction were rejected by the Lahore High Court and then the Supreme Court on March 20, 2001 and November 8, 2001 respectively. His mercy petition was subsequently rejected by the President. It is my understanding that the issue of age was not raised before the trial court or the appellate courts by his counsel, and that a session judge dismissed Jawed Khan's application on 11 March 2004 apparently on the basis that photocopies of school leaving and birth certificates giving his date of birth as 3 April 1982, appeared to be fictitious. It is my understanding that he filed an appeal before the Lahore High Court, due to be heard in late February 2007.

While I do not wish to prejudge the accuracy of the allegations regarding this specific case, I would like to draw your attention once again to the fact that the execution of Mr. Jawed Khan would be incompatible with the international legal obligations of Pakistan. Article 37(a) of the Convention on the Rights of the Child expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. General Comment No. 10 (2007) of the Committee on the Rights of the Child provides in paragraph 22 "If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt".

I would respectfully appeal to the Government of Pakistan to take all necessary measures to comply with international human rights law and to prevent executions of offenders who were under the age of 18 at the time of the offense. This includes, most urgently, the suspension of the execution of Mr. Jawed Khan.

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

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy. Please confirm whether a medical or social investigation has been carried out to establish Mr. Jawed Khan's age, given that documents pertaining to his age were disputed.
2. Please provide details of the appeal proceedings in Mr. Jawed Khan's case before the Lahore High Court scheduled for February 2007.

Pakistan: "Shoot on Sight" Orders Issued following Clashes in Karachi and the North West Frontier Province

Violation alleged: Deaths due to excessive use of force by law enforcement officials

Subject(s) of appeal: General

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 23 May 2007

I am writing concerning recent reports I have received that the Pakistan army has issued 'shoot on sight' orders in different parts of Pakistan in the past weeks.

It has been reported to me that clashes broke out in Karachi on 12 May, 2007 between supporters of suspended Chief Justice Muhammad Chaudhry and President Musharraf, in the course of which 38 people are said to have been killed. Further contingents of paramilitary troops are said to have been drafted into the affected areas of Karachi. Major General Javed Zia is reported to have stated: "the rangers have got extra powers of shoot on sight and arrest in case of riots and violence". At the same time, it was reported that security officials had stood by, or vanished from the streets in Karachi, as armed groups of the Muttahida Quami Movement, a pro-government political party, and opposition parties clashed with one another on Saturday.

On 5 May, 2007 it was reported that 40 persons had died after two days of fighting in Parachinar, north west Frontier Province between Sunni and Shiite muslims in response to a religious rally held the previous week. Officials reportedly stated that soldiers were given shoot on sight orders to curb the violence. It was reported that a curfew was imposed and that army troops backed up by gunship helicopters were patrolling the streets of the town.

In this connection, I would like to remind the Government of your Excellency of its obligations to promote and protect the right to life as required by the various international human rights treaties ratified by Pakistan. These obligations are given greater specificity in the Basic Principles on the Use of Force and Firearms by Law

Enforcement Officials. The Principles provide that law enforcement officials, in carrying out their duties, shall as far as possible apply non-violent means and shall only use force in exceptional cases including self-defense or defense of others against the imminent threat of death or serious injury. Such force must be proportional to these objectives, the seriousness of the crime and must minimize damage and injury. Force may only be used when less extreme means are insufficient. Arbitrary or abusive use of force and firearms by law enforcement officials is to be punished as a criminal offence under national law. Similarly, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

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

1. Are the reports concerning the shoot to kill orders accurate? If so, has the Government taken any action to countermand the policy?
2. Please provide detailed information on the terms of the current rules of engagement that the military have to follow, including details on the above-mentioned policy allowing soldiers to “shoot to kill” those involved in rioting.

Pakistan: Killings in the Context of the Siege at Lal Masjid (Red Mosque)

Violation alleged: Deaths due to excessive use of force by law enforcement officials

Subject(s) of appeal: At least 102 persons

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Pakistan. The SR notes, however, that the assertion that “the operation was launched in accordance with international laws and practices” is conclusory and that the response does not clarify what took place during the raid.

Allegation letter dated 26 September 2007

I am writing concerning information I have received relating to the siege and conflict at Lal Masjid (Red Mosque) in Islamabad, between 3 July 2007 and 10 July 2007.

According to information received:

During the week-long siege in which students, supporters and clerics of Lal Masjid refused to leave the mosque and its annexed madrassa (Jamia Hafsa), and as a result of heavy fighting between mosque supporters and your Government’s security forces, at least 102 people were killed. According to

reported Government figures, 16 people were killed on 3 July 2007, and when 'Operation Silence' was launched by your Government on 10 July to end the siege, a further 75 mosque supporters, 10 soldiers, and 1 policeman were killed. Allegations received from other sources suggest that the number of dead may have been much higher, perhaps in excess of 300.

Allegations received indicate that it is unclear if any women and children were among the dead. It is also unclear whether the mosque followers held hostages inside the mosque. It was reported by your Government that hundreds of women and children were being held against their will and perhaps used as shields inside the mosque, but this was disputed by mosque clerics and some students. Your Government is also reported as having stated that no bodies of women or children were found inside the mosque after the siege, although 13 bodies were, apparently, so badly burned that army spokesman Major General Waheed Arshad stated that their age and gender could not be determined, and an Islamabad city official is reported as stating that at least two children were among the bodies later buried. The army is also reported as stating that the mother of Maulana Abdul Aziz and Ghazi Abdur Rashid, leaders of the mosque, was killed during the fighting.

According to information received, there is little independent information available on the weapons or methods or force used by mosque supporters or by your Government's security forces. Some reports suggested that mosque supporters were armed with mortars, grenades, machine-guns and suicide-bomb belts. There have also been reports of multiple suicides, or suicide bombings within the mosque, although there has been no confirmation of this, or of numbers of those civilians who may have been killed by mosque supporters. Reports of the possible use of nerve gas by your Government's security forces in the basement of the mosque complex have also been brought to my attention, as have allegations of the use of white phosphorous, or M15 White Phosphorous hand grenades, and rocket propelled grenades. I have also received allegations that the Jamie Hafsa madrassa has since been destroyed, and that the reason for this may have been to destroy evidence related to the siege and conflict.

The final attack on the mosque on 10 July 2007 by your Government's security forces occurred, according to reports from Government sources, after negotiations between your Government and mosque leaders broke down. Other accounts received by me have suggested that negotiations were hasty – according to statements made to the media by a member of the Government negotiating team, "the Government wanted to do the operation in a hurry". It was also widely reported that President Musharraf offered an ultimatum to mosque supporters, stating that people "hiding in the Red Mosque should come out, otherwise they will get killed. Action will be taken against them if they don't come out."

I have received further allegations that since the siege, there have been no independent inquiries or investigations to determine what occurred at the mosque, the numbers and identities of the dead, or the circumstances of each death. It has been brought to my attention that at the end of August 2007, the Supreme Court ordered

Government departments to explain the legality of the security force response to the siege. According to information received, this information has yet to be submitted to the Court, or to have been made public.

While I do not wish to prejudge the accuracy of information received, I would like to refer your Government to the applicable principles of international law. In relation to the many children who may have been present in the mosque, Article 6(1) of the Convention on the Rights of the Child (CRC), which your Government has ratified, provides that every child has the right to life. With respect to the use of force at Lal Masjid by your security forces, customary international law requires (see Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc A/61/311, para 35), as expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials (“Basic Principles”), that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9). In allegations received, there has been some concern that the very high numbers of mosque supporters killed, together with the ‘surrender or be killed’ ultimatum offered by President Musharraf, allegations of hasty negotiations, destruction of the Jamie Hafsa madrassa, and use of weapons such as grenades and white phosphorous or nerve gas, suggest that your Government’s security forces may have failed to exercise sufficient restraint, and may have failed to minimize injury or to use lethal force only where strictly necessary to preserve life.

I would also like to bring to your Government’s attention its duty to investigate, prosecute, and punish all violations of the right to life. This duty applies with respect to all persons killed, whether they were killed by mosque supporters or your Government’s forces. To fulfill this legal obligation, governments must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7). There must be also thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides guidelines for investigations, which includes conducting an adequate autopsy on each victim, and the collection and analysis of all physical and documentary evidence. Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17).

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

1. How many people were killed at Lal Masjid, between 3 and 10 July 2007? How many of these were students, leaders or supporters of the mosque, and how many were journalists, civilian bystanders, police, or security forces? Of those killed

within the mosque, how many, if any, were hostages held by mosque supporters? How many of the victims were killed by mosque supporters, and how many by Government forces?

2. Did the mosque supporters hold hostages in Lal Masjid? What measures were taken to ensure that a decision to raid the mosque to free hostages was based on credible evidence? What measures were taken to ensure that such a raid would result in minimal harm to any hostages?
3. What measures were taken to ensure that your Government's security force engagement with the mosque supporters complied with international law? Please provide a copy of the rules of engagement that the security forces were required to follow. What methods of force, and what weapons were used by your Government's forces? In particular, were chemical or incendiary weapons used?
4. What are the status and results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incidents? What efforts have been taken by your Government to ensure that investigations have, or will be, independent, thorough and prompt? Was the Jamie Hafsa madrassa destroyed after the siege was concluded, and if so, why? If its destruction was necessary, was all relevant information related to police, medical or other investigations obtained from the area first?
5. Please provide the details, if any, of any disciplinary measures imposed on, or criminal prosecutions against, police or members of the armed forces, or mosque supporters or leaders responsible for the alleged incidents.
6. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

Response from the Government of Pakistan dated 13 December 2007

Background

The facts that led up to 3 July 2007 have been cataloged extensively by the national and international media. These include the fact that the Lal-Masjid administration committed serious crimes, including abduction of women and foreigners, moral policing, threat to peaceful civilians, including video-shop owners as well as abduction of police officials.

The Lal-Masjid is located in the centre of Islamabad, within a densely populated residential area, and is close to the diplomatic enclave. The activities of the administration and the students of the adjoining Jaamia Hafsa directly affected the civilian population.

Based on their particular extreme views they tried to create a state within the state by establishing a parallel (religious) Court and took upon themselves "moral policing". Despite repeated requests and warnings, the Lal-Masjid administration refused to accept the writ of the Government and intensified their unlawful activities. They

refused to abide by the rule of law and threatened the Government with violence and suicide attacks.

It was only after the unprovoked and unlawful resort to violence by the inmates of the Lal-Masjid and Jamia-Hafsa Complex on the 3rd July 2007, in which they took hostages and set fire to three government buildings that resulted in the loss of 16 innocent civilians, that the Government decided to lay siege of the Complex.

Casualties

During 3-10 July 2007, 103 people lost their lives as a result of the Lal-Masjid crisis. These included eleven security forces personnel. Detailed breakdown is attached as Annex-A.

Mosque supporters killed sixteen people during the initial violence on the 3rd July 2007. Thereafter, 10 security forces personnel lost their lives.

Only one dead body of an unidentified female was recovered from the Complex after the operation.

Release of hostages and efforts by the government for a peaceful settlement

The Lal-Masjid Administration kept hostage innocent civilians for quite some time. Fortunately all of these innocent victims were released before the final operation.

Released hostages were handed over to their relatives. While female hostages were immediately handed over to their relatives, the male hostages were released after interrogation.

The Government laid siege for seven days before launching the final operation. This was done despite repeated advice from many concerned citizens to take action. The objective was to provide maximum space for a negotiated settlement as well as to ensure release of all hostages. Details of the released hostages are given in Annex-B.

The operation was launched only when credible evidence was available that there were no hostages/innocent civilians left inside the Mosque.

The Government provided every opportunity to the militants in the Lal Masjid/Jaamia Hafza Complex to surrender before launching the operation.

The decision to launch the operation was taken after careful consideration when all other options were closed and a peaceful settlement of the issue looked impossible. The Government involved all concerned including prominent politicians, Ulema (religious scholars) and members of civil society to negotiate with the Lal-Masjid administration.

Details of the Operation

The operation was launched in accordance with international norms and practices. No chemical or incendiary weapons were used. The entire operation was conducted by

the best trained Anti Terrorist Unit of the Pakistan Army using conventional weapons. All the drills and procedures followed during the operation were in accordance with international standards.

The operation helped recover huge catchets of arms and ammunition from the Complex. Details are attached as Annex-C. Details of the operation were also issued to the media and civil society through daily press briefings.

Identification of casualties

Identification of the dead was done after die operation through biometric matching and DNA tests.

Reconstruction and Compensations

After the operation, Lal-Masjid has been renovated and opened to the general public. However, the structure of the Jamia-Hafsa building has been declared dangerous by experts. It has therefore been demolished.

The Government of Pakistan has announced compensation for the relatives of innocent victims.

I hope the above points respond to the questions raised in your letter. We remain ready to discuss with you any further queries that you may have with regard to the Lal Masjid situation.

Annex "A"

DECEASED

Law Enforcement	11
Pre-operation	16
During Operation	76
Total	103

Annex "B"

HOSTAGE RELEASED

Male	662
Female	470
Total	1132

Annex "C"

ARMS/AMMUNITION

The Government recovered a huge quantity of arms and ammunition from the compound. Details are as under:

Sr	Items	Quantity
a.	SMG	49

b.	SMG Magazine	148
c.	SMG Ammunition	6015
d.	Pistol (Including 1 x Pistol Sig)	11
e.	Pistol Magazine	11
f.	Pistol Ammunition	83
g.	RPG-7	4
h.	RPG-7 Ammunition	19
i.	Repeater	4
j.	Repeater Ammunition	275
k.	7 MM	3
l.	7 MM Ammunition	101
m.	3.3 Rifle	8
n.	IMP Rocket Launcher RL	1
o.	IMP RL Ammunition	10
p.	Grenade All Types	77
q.	HMG	6
r.	HMG Magazine	15
s.	Mine Anti Personal	18
t.	Mine Anti Tank	2
u.	IED	15
v.	Bino	2
w.	Air Gun	3
x.	Motorola	9
y.	Suicide Jacket	1
z.	Face Mask Large	22
aa.	Face Mask Small	7
bb.	Patrol Bottle	50
cc.	Knives	91
dd.	Bandoliers All Types	17
ee.	Lancer	3
ff.	Face Cover (Black)	6
gg.	Detonating Card	1
hh.	Marriage Bomb	15

Pakistan: “Shoot to Kill”-Order Issued in the Context of Parliamentary Elections

Violation alleged: Deaths due to attacks or killings by security forces

Subject(s) of appeal: General

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 21 January 2008

I am writing concerning information I have received that President Pervez Musharraf gave orders on 14 January 2008 that Pakistan's Army and the Paramilitary Rangers were to "shoot to kill" rioters and anyone who tried to disrupt the upcoming parliamentary elections.

Without wishing to prejudge this information, I would like to remind your government of the relevant standards of international human rights law. Human rights law protects every individual's inherent right to life (Article 6, International Covenant on Civil and Political Rights (ICCPR); Article 3, Universal Declaration of Human Rights (UDHR)). While your government does have a due diligence obligation to protect the lives of persons within your territory and jurisdiction from attacks from criminals, the intentional lethal use of force by police may only be used against suspected criminals where it is in fact strictly unavoidable in order to protect life (Article 6 of the ICCPR, as expressed in Principle 9 of the UN Basic Principles on the Use of Firearms by Law Enforcement Officials (Basic Principles)).

As I have previously reported, "the rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes" (Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc E/CN.4/2006/53, 8 March 2006). Your government's laws must "strictly control and limit the circumstances" in which law enforcement officers may resort to lethal force (*Baboeram v Suriname*, UN Human Rights Committee (4 April 1985), paragraph 14). Less than lethal police tactics must be attempted where feasible. And, unless it would unduly risk death or serious harm to law enforcement officers or other persons, law enforcement officers must give suspects the opportunity to surrender and must employ a graduated resort to force (Principles 4 and 10, Basic Principle; *Suárez de Guerrero v Colombia*, UN Human Rights Committee, 31 March 1992, paragraph 13.2).

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

1. Did President Musharraf give "shoot to kill" orders as detailed above?
2. If so, please provide the precise terms of the "shoot to kill" order. Specifically, please indicate: (a) over what period of time and in what circumstances the order will apply; (b) whether it applies to all of Pakistan, or to a specific geographic area; (c) to whom the order gives authority to "shoot to kill"; and (d) any limits on the use of force provided by the order.
3. Please indicate what processes are or will be put in place to independently investigate any alleged killings by your law enforcement officials while the "shoot to kill" order is in place.

4. Please clarify whether, and if so, how, the “shoot to kill” order complies with your government’s international human rights obligations as detailed above.

Pakistan: Death Sentence of Zahid Masih

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response concerning these allegations.

Urgent appeal dated 7 March 2008 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Mr. Zahid Masih, who was reportedly sentenced to death after having been allegedly tortured in pre-trial detention and who is scheduled to be executed on 12 March 2008.

According to the information we have received:

Mr. Zahid Masih, a member of the Regiment/Unit 4 Commando Battalion (Special Service Group) Chirat, was sentenced to death by hanging by a military court on 10 March 2006 for sodomy and murder of a nine-year old boy on 1 March 2005. He was held in incommunicado military pre-trial detention and allegedly subjected to torture in order to force him to confess. Concern has been expressed that he was denied a fair trial and in particular had no legal representation. His appeal of clemency to the President was turned down.

While we do not wish to prejudge the accuracy of the reports received, we would like to draw the attention of your Excellency’s Government to several principles applicable to this case under international law.

We would in the first place respectfully remind your Excellency’s Government that according to the well-established international standard in capital punishment cases, the obligation of states to observe rigorously all the guarantees for a fair trial admits no exception. (See, *Little v. Jamaica*, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the case at issue, this guarantee includes the right not to be compelled to confess guilt. Another central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to

7 September 1990. Principle 6 is particularly pertinent to the present case: “Any such persons [charged with a criminal offence] who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.”

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in article 12 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which provides that, “Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.”

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights under international law of Zahid Masih are respected. This can only mean suspension of the capital punishment until the allegations of torture and denial of fair trial have been thoroughly investigated and all doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting Zahid Masih to torture is ensured.

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

1. Are the above reports accurate, particularly regarding access to legal counsel? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the steps undertaken to investigate the reports of torture and any proceedings initiated against persons suspected of having tortured Zahid Masih.

Papua New Guinea: Killings by Private Security Forces at the Porgera Joint Venture Gold Mine

Violation alleged: Deaths due to attacks or killings by security forces

Subject(s) of appeal: At least 8 persons

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of Papua New Guinea has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Allegation letter dated 18 January 2008

I am writing concerning information I have received that at least eight Porgera residents have been killed since 1993 by private security forces at the Porgera Joint Venture (PJV) gold mine in Porgera, Enga province, Papua New Guinea.

According to information received:

The number of killings at the mine ranges from 8 to 29. Allegations received state that Placer Dome, the former majority owner of the PJV mine admitted that 8 persons had been shot by PJV security. Allegations received also state that other sources indicate higher numbers of deaths. One source alleges that the following 14 persons were shot by PJV security: Henry Tendeke; Taitia Maliapa; Paul Pindi; John Wangla; Pyakani Tombe; Yandari Pyari; Jerry Yope; Jackson Yalo; Joe Opotaro; Aglio Wija; Mina Mulako; Alonge Laswi; Minata Pita; and Pyakane Eremi. The allegations received indicate that other sources put the number of killings at 29.

Further, according to information received, there has been a failure by your Government to effectively investigate, prosecute and punish the perpetrators of each of these killings. Allegations received indicate that very few of the killings have been adequately investigated. A Government Commission of Inquiry was established in 2006 to report on the causes of deaths at the PJV mine. Following the apparent failure of the regular investigative procedures, I commend your Government for instituting a special inquiry. However, according to the reports received, the findings of this Commission of Inquiry have not been made public, despite repeated requests from PNG citizens.

Without in any way implying any conclusions as to the facts or the accuracy of the information which I have received, I would like to refer your Government to the applicable principles of international human rights law. Article 3 of the Universal Declaration of Human Rights (UDHR), and Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provide that every person has the right to life. I would like to recall that, as stated in Commission on Human Rights Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions", all states have the obligation to "conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions." This obligation, affirmed in the jurisprudence of the Human Rights Committee (see *Arhuacos v Colombia*, Communication no. 612/1995, para. 88), is part of the obligation to respect and protect the right to life enshrined in the UDHR and the ICCPR.

In light of the apparent lack of publication of the findings of the Commission of Inquiry report, I would like to clarify that for such inquiries to be acceptable, the

results must be made public, and include details of the findings, and any prosecutions subsequently undertaken (see Report of the Special Rapporteur on extrajudicial, arbitrary or summary executions, E/CN.4/2006/53 (8 March 2006).

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

1. How many people have been killed by PJV private security, or PNG police, at the PJV minesite since it began operations? What are their names, dates, the circumstances of each of these deaths?
2. Please provide details and results of all police or medical examinations (autopsy), and judicial or other inquiries carried out in relation to each death. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. If the perpetrators have been identified, please provide the full details of any prosecutions which have been undertaken.
4. What PNG laws or agreements govern the use of force by private security forces and police forces? What lethal and less than lethal weapons are the forces permitted to carry? What oversight does the Government of PNG exercise over the security forces employed at the mine site?
5. What compensation, if any, has been provided to the families of the deceased?

Philippines: Impunity for Killings of Leftist Activists

Violation alleged: Impunity

Subject(s) of appeal: 2 females; 8 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Philippines. The SR notes that he reported on the overall pattern of killings of human rights defenders following a visit to the Philippines in February 2007 (A/HRC/8/3/Add.2). The SR would, however, appreciate receiving updated information should any progress be made in achieving justice in these individual cases.

Letter of allegation dated 2 June 2006 with the Special Representative of the Secretary- General on the situation of human rights defenders

In this connection, we would like to bring to your Government's attention information we have received concerning a sharp increase in reports of killings of human rights activists who are believed to be targeted for their activities for the promotion of human rights. According to the information we have received:

More than thirty killings of human rights defenders have taken place during the first quarter of 2006 alone. The cases listed in the annex to this letter are illustrative of this broader tendency and share certain common elements: a majority of victims are reported to have been shot at point-blank range by unidentified gunmen. Besides, none of these killings has reportedly been investigated and perpetrators remain at large. Reports also indicate that this figure is only indicative of a much higher criminal rate against human rights activists who continue to carry out their work in an increasingly dangerous environment.

In this connection, we regret that your Excellency's Government has failed to provide us with sufficient information as requested in our letters -sent over the last two years- with regard to the thorough investigation of such killings and the outcome of relevant criminal and judicial proceedings.

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency's Government to take effective measures against impunity to deter and prevent further assassinations of human rights defenders.

In this respect, we would like to recall that, as reiterated in Commission on Human Rights Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". This obligation, affirmed also in the jurisprudence of the Human Rights Committee (see, e.g. the Committee's views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8.), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

We would also like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring your Excellency's attention to the following provisions, and in particular:

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The Special Rapporteur on extrajudicial, summary or arbitrary executions also wishes to remind your Excellency's attention that, to date, he has not received a response to his request for a factfinding mission. If accepted, a visit would allow him to examine in situ questions relating to impunity and to formulate pertinent recommendations with the objective of strengthening the protection of the right to life.

It is our responsibility under the mandate provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the annexed summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, or other inquiries which may have been carried out in relation to these cases. If no inquiries have taken place or if they have been inconclusive please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether witnesses to these attacks have been afforded with adequate security and witness protection.
6. Please indicate whether compensation has been provided to the victims and the families of the victims.

Annex

On 27 March 2006, Mr Vicente Denila, member of the Camansi Farm Workers' Cooperative (CFWC) and an active defender of farmers' rights, was shot and killed by unknown armed men in Negros Oriental.

On 5 April 2006, Mr Florencio Perez Cervantes, an active supporter of the Bayan Muna (People First) political party and community spokesman, was killed in his house in Barangay village, Santa Cruz, Rosario, Agusan del Sur. Armed men clad in

bonnets forcibly entered the house and reportedly shot at Mr Perez Cervantes and his family while they were asleep. Mr Perez Cervantes suffered 47 gunshot wounds to his body. According to a statement made by the 36th Infant Battalion of the Philippine Army, Mr Perez Cervantes was killed in crossfire. To date, his murder has not been investigated.

On 15 April 2006, Mr Rico Adeva, a land rights activist and staff member of the Task Force Mapalad (TFM), was shot and killed with his wife while he was on his way to Talisay. Three armed men reportedly asked the couple to lie down and shot several times in their head, neck, hands and torso.

On 22 April 2006, Mr Porferio Magsalang, an active defender of rural workers and Chair of the Pambansang Katipunan ng Makabayang Magbubukind (PKMM), was shot and killed by four unidentified armed men, who entered his home in Sitio Caraan, Brangay Tampalon.

On 24 April 2006, Mr Enrico Cabanit, Chairperson of WADECOR Employees Agrarian Reform Beneficiaries Association Inc. (WEARBAI) and Secretary General of Pambansang Ugnayan ng mga Nagsasariling Lokal Organisasyon sa Kanayunan (National Coordination of Local Autonomous Rural People's Organisations-UNORKA), was shot in the head and killed at the Panabo Public Market by two unidentified individuals. His 23 year old daughter, Daffodil also member of UNORKA, was also seriously injured in the attack, sustaining a gunshot wound in her chest. She was transferred in a critical condition to the hospital. A few hours before his killing, Mr Cabanit had participated in a successful dialogue between the Davao del Norte plantation workers and officials of the Department of Agrarian Reform. During this meeting, he had requested that some land belonging to a local landowner Don Antonio Floirendo be included in the list of plots to be redistributed by the Comprehensive Agrarian Reform Programme (CARP) to poor farmers in the region. This attack occurred less than two months before the National Congress of UNORKA was to be held in Panabo in June 2006.

On 10 May 2006 Ms Elena Mandiola, secretary general of the Bayan Muna (People First) party, and her husband Mr Ricardo Balauag, were killed by armed men in Barangay Gair, Echague, Isabela. It is reported that Ms Elena Mandiola had previously been the subject of an attempt on her life on 10 March 2006.

On 18 May 2006 Ms Annaliza Abanador-Gandia a pro democracy activist and leader of the Pagkakaisan ng Kabababain (Kaisa Ka), an organisation that works in defence of women's rights, was shot and killed by two unknown gunmen. It is alleged that she was working inside the Duckie shop in Batanga City when two men arrived on a motorcycle and entered the shop. It is reported that Ms Annaliza Abanador-Gandia suffered multiple gun shot wounds to her head and body.

On 21 May 2006 Reverend Andy Pawican, a pastor with the United Church of Christ in the Philippines and a defender of the rights of rural workers was shot and killed by armed men in Barangay Fatima, Pantabangan, Nueva Ecija.

On 27 May 2006 Mr Noel Capulong, spokesperson for the Southern Tagalog Environmental Action Movement and deputy secretary general of Bayan Muna in Southern Tagalog was shot and killed by unknown armed men.

Since August 2005, the Special Representative of the Secretary-General on the situation of human rights defenders, along with other Special Procedures mandate holders, has issued five communications concerning the killings of eight human rights defenders. On 11 May 2005, the Special Rapporteur on extrajudicial, summary or arbitrary executions also sent a letter of allegation concerning the extrajudicial killing of a labour rights activist by members of the military forces. To date, the Government of the Philippines has only responded to one of the communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions as reflected in his report on communications (see E/CN.4/2006/53/Add.1).

Response from the government of the Philippines dated 19 June 2007

KILLING OF MR. VICENTE DENILLA

Investigation conducted by the Negros Oriental Police Provincial Office disclosed that on 27 March 2007 at about 7:30 a.m., Mr. Denilla was shot by two (2) unidentified armed men wearing ski masks a few meter away from his residence at Sitio Cansuyong, Barangay Novailas, Negros Oriental. Thereafter the suspects fled towards Sitio Lamakan, Barangay Sta. Cruz, Negros Oriental. The police recovered one empty bag and one live ammunition for 12 gauge shotgun at the crime scene.

Investigation also disclosed that the victim was a beneficiary of a parcel of land from Mr. Deogracias Erac, under the Comprehensive Agrarian Reform Program (CARP), which is believed to be the cause of dispute between the two. During a confrontation between the victim (who was then with companions Anastacio Villa, Jr. and Francisco Ruben, also CARP beneficiaries) and Mr. Miguel V. Duque (caretaker of the properties of Mr. Erac), the victim and his companions were allegedly threatened that they will be killed.

Continues investigation is being pursued by the Negros Oriental Police Provincial Office for the possible identification and apprehension of the suspects.

KILLING OF MR. PORFERIO MAGSALANG, SR.

Mr. Magsalang, Sr., a member of the *Pambansang Katipunan ng Makabayang Magbubukid* (PKMM), was killed at Sitio Cara-an, Barangay Tampalon, Kabankalan City, Negros Occidental. The suspects were later identified as Rustom Puro a.k.a..Rastom, certain Felix, Willy and Parok who are allegedly members of an underground movement in that area. It is perceived that the victim's secret linkage with military intelligence was the reason behind the killing,

A case of murder was filed against the suspects on 28 August 2006 at the Kabankalan City Prosecutors Office and was later endorsed to the Presiding Judge of RTC Branch 61, Judicial Region, Kabankalan City. The Presiding Judge issued an Order of Arrest against the suspects with no bail recommended. On-going manhunt operation is being

conducted by the Kabankalan City Police Station for the possible apprehension of the suspects.

KILLING OF MR. ENRICO CABANIT

Investigation conducted by Task Force Cabanit disclosed that the killing of Mr. Cabanit on 24 April 2006 at around 6:10 p.m. at Panabo Premium Market, Panabo City, Davao del Norte appears to be connected with his position as Secretary-General of UNORKA-Mindanao. His daughter, Dafodil Cabanit, was also seriously injured during the attack.

It is believed that victim's active advocacy in the promotion of the farmer's welfare and in upholding their rights have consequently put him in conflict with different influential personalities and groups in that area. However, this angle could not be established by the investigators due to the death of suspected gunman Enrique D. Solon II a.k.a. Monching and his companion, Michael B. Buenaflor, on 26 May 2006 at Purok Malipayán, Hadanao Hiway, General Santos City.

The PNP could not elevate the case in court due to the non-cooperation of Mr. Cabanit's daughter. The Criminal Investigation and Detection Group (CIDG) in Camp Crame is coordinating with Ms. Cabanit for identification and confirmation of some evidence related to the case. Meanwhile, Task Force Cabanit is continuously conducting investigation to identify the mastermind in the killing.

KILLING OF REV. ANDY PAWIKAN

Investigation conducted by the Nueva Ecija Police Provincial Office revealed that Rev. Pawikan was killed during an encounter between the members of the 48th Infantry Battalion of the Philippine Army and a group of communist terrorists on 21 May 2006 at Sitio Maasip, Barangay Tayabo, San Jose City, Nueva Ecija.

Philippines: Impunity for Killings of Leftist Activists

Violation alleged: Impunity; Deaths due to attacks or killings by the military

Subject(s) of appeal: 4 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Philippines. He would note that he reported on the overall pattern of killings of human rights defenders following a visit to the Philippines in February 2007 (A/HRC/8/3/Add.2). The SR would appreciate receiving updated information should any progress be made in achieving justice in these cases.

Letter of allegation dated 15 September 2006 sent with the Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding the extrajudicial killings of Pastor Isaias Sta. Rosa, Ceasar Quimco, Victor Olayvar, and Napoleon Bautista allegedly by members of the military.

According to the information received:

Pastor Isaias Sta. Rosa, a United Methodist Church religious worker and a member of the leftist Kilusang Magbubukid ng Bicol (Peasant Movement of Bicol), was killed in Barangay (village), Malobango, Daraga, Albay. On 3 August 2006, several armed men reportedly entered the house of Pastor Sta Rosa and ordered all those inside to drop to the floor. They then grabbed Pastor Isaias and beat him while trying to force him to admit that he was in fact a person named "Elmer". Pastor Isaias allegedly denied being that person and told them to check his identification card. According to our source, Pastor Isaias was then taken outside. When his family was certain that the armed men had left, they rushed outside. His family found the dead body of Pastor Isaias lying in a nearby creek, some 40-50 meters away from their residence. He reportedly suffered six gunshot wounds in his chest, thigh and foot. According to the information received, this case appears to involve the military, given that the body of an alleged perpetrator was found next to the Pastor's body. The local police have identified the body as being that of Corporal Lordger Pastrana. The following items were found on his body: an identification card showing that he was a member of the Army's 9th Infantry Division (ID), based in Pili, Camarines Sur; a 45-caliber pistol; a cellular phone allegedly taken from Sta. Rosa's house; and a mission order detailing the operation he was part of and signed by Major Earnest Mark Rosal. Corporal Pastrana is believed to have been one of the armed men who entered the house of Pastor Isaias, but it is thought that he was accidentally shot by his own men while Pastor Sta. Rosa was trying to escape. The Corporal reportedly received a bullet in the right side of his body. On 22 August 2006, Ceasar Quimco was killed in Barangay (village), Ipil, Carmen, Cebu.

According to our source, Mr. Quimco had received death threats and his family was being harassed by elements of the Army's 78th Infantry Battalion. It is reported that Mr Quimco had a conflict with two military attached to the said Battalion.

On 7 September 2006, Victor Olayvar was shot dead by armed men riding on a motorcycle at Bridge Caban, Barangay (village), Cantubod, Danao. At the time of his death, Mr. Olayvar was an active leader of Bagong Alyansang Makabayan or Bayan-Bohol. He was also the former president of HUMABOL (Bohol Peasant Organisation) from 1997 to 2000. Mr. Olayvar is believed to have been targeted by the military in Bohol as he was been threatened by elements of the 302nd Brigade.

According to the information received, the same day the death body of Napoleon Bautista was found in Barangay (village) Pungo, Calumpit, Bulacan. His hands were tied with wire and his feet had torture marks. He suffered two gunshot wounds to his head and back. According to our source, on 30 August

2006, Mr. Bautista was abducted together with his wife, allegedly by elements connected to the military. His wife was released a day after she was abducted while her husband remained disappeared. Napoleon Bautista was a member of Samahang Bantay Palaisdaan, a group of fishermen that belongs to a national organisation of fishermen Pambansang Lakas ng Kilusang Mamamalakaya ng Pilipinas (Pamalakaya). El Sr. Bautista was amongst those who survived the Mendiola massacre in 1987. In that incident, government forces reportedly opened fire at a crowd of peasants and protesters killing several of them while they were holding a protest demanding land reform.

We are gravely concerned by the increase in reports of extra-judicial killings in the Philippines. Indeed, more than 50 killings have taken place since January 2006, many of which were brought to your attention in our letters sent to your Government in 2006. In the Annex to this letter you will find the latest cases of alleged extra-judicial executions which have been brought to our attention. The cases are illustrative of this broader tendency and share certain common elements: witnesses have reported victims being shot dead by unidentified men, with suspected links to the military police, and other security forces. The principal targets of the shootings are political opponents (in particular left-wing party activists), human rights defenders, journalists, lawyers, community leaders, and union workers who speak out against the authorities.

According to the information received, the lack of effective investigation and prosecution of perpetrators creates a climate of impunity which further fuels human rights violations and extrajudicial killings.

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency's Government to take effective measure against impunity to deter and prevent further assassinations political activists.

In this respect, we would like to recall that, as reiterated in Commission on Human Rights Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation (...) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, (...) and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". This obligation, affirmed also in the jurisprudence of the Human Rights Committee (see, e.g. the Committee's views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8.), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental

freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring your Excellency’s attention to the following provisions, and in particular:

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The Special Rapporteur on extrajudicial, summary or arbitrary executions also wishes to remind your Excellency’s attention that, to date, he has not received a response to his request for a factfinding mission. If accepted, a visit would allow him to examine in situ questions relating to impunity and to formulate pertinent recommendations with the objective of strengthening the protection of the right to life.

It is our responsibility under the mandate provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above and in the annexed table accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, or other inquiries which may have been carried out in relation to these cases. If no inquiries have taken place or if they have been inconclusive please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether witnesses to these attacks have been afforded with adequate security and witness protection.
5. Please indicate whether compensation has been provided to the victim and the families of the victim.

Response from the Government of the Philippines dated 15 June 2007

Further to their letter dated 27 November 2006, the Government of the Philippines provided the following information.

Pastor Isaias Sta. Rosa was recruited to the National Democratic Front (NDF) in 1989 to take charge of the underground publication and printing of anti-government materials. In 1999, he relinquished his position as provincial chair of the *Kilusang Magbubukid ng Pilipinas* (KMP)-Albay but remained incognito until his death. From 2003 to 2006, he was monitored frequenting far-flung areas in Albay with his sister, Mercy Sta. Rosa, head of the United Front Committee of BRCP, and Secretary of the Provincial Party Committee of the Communist Party of the Philippines/New People's Army (CPP/NPA), organizing farmers associations.

Pastor Sta. Rosa was shot to death on 30 August 2006 in Barangay Malobago, Daraga, Albay. One of the suspects in the killing, Cpl. Lodger G. Pastrana of the Philippine Army was also found dead beside Pastor Isaias' body. Among the things recovered from his body were a mission order signed by Maj. Ernest Marc Rosal dated 11 July 2006 expired on 30 September 2006 and a 45 caliber pistol Llama with silencer loaded with 6 live ammunitions. However, a spent shell and a slug of 45 caliber pistol which were recovered at the crime scene and examined by the Philippine National Police (PNP) Crime Lab, revealed that these were fired from 2 different 45 caliber pistols and not from the pistol Llama recovered from the body of Cpl. Pastrana. The recovered pistol Llama was later on verified and was found to be registered to one Amaldo L. Manjares whose license expired in November 2001.

The Philippine Army claimed that Cpl. Pastrana was a member of the Public Affairs Office of the 19 Infantry Division of the Philippine Army in Albay and at the time of the incident was visiting a girlfriend in the same barangay. However, the Chairman of said barangay issued a certification that Cpl. Pastrana was never seen nor was known courting a girl in said locality.

Police investigators are having difficulty solving the case due to the non-cooperation of the Philippine Army in the investigation. They are closely coordinating with the family of Pastor Sta. Rosa in gathering additional information.

On 18 May 2007, a case of murder was filed by PNP at the Albay Prosecutor's Office against Maj. Ernest Marc Rosal, Arnaldo L. Manjares and ten other John Does docketed as IS# 2007-0213.

Philippines: Impunity for Killing of Leftist Activists

Violation alleged: Impunity

Subject(s) of appeal: 5 males

Character of reply: Receipt acknowledged

Observations of the Special Rapporteur

In relation to the Government's request that more specific information be provided on the locations of the incidents concerned so as to facilitate coordination with the relevant local authorities, the Special Rapporteur would note that the information provided should have been completely sufficient for that purpose, and he looks forward to receiving a substantive response.

Urgent appeal dated 21 December 2006 sent with the Special Representative of the Secretary-General on the situation of human rights defenders

We would like to bring to your Government's attention information we have received concerning Mr **Alberto Yadan**, peasant leader, activist for agrarian reform and director of *Ugnayan ng mga Nagsasariling Lokal na Organisasyon sa Kanayunan* (UNORKA – Pilipinas), Mr **Bong Gonzal**, a community organiser for *PROGRESO* and regional coordinator for *PEACE*, a national non-governmental organization in Visayas, Mr **Jesus Buth Sevida**, labour activist and member of the Solidarity of Cavite Workers (SCW), Mr **Joel Sale** and Mr **Kenny Mari Severo**.

According to the information received:

On 6 December 2006, Mr Alberto Yadan was shot dead at his home in Barangay Tipas, San Juan, Batangas, in the presence of his family. Sources allege that the police failed to conduct a proper investigation of the crime scene and did not take into account any forensic evidence which may have been present. Reportedly Mr Alberto Yadan and other family members had been receiving death threats since 2004, the most recent on 5 December 2006, from policemen in the village. Mr Yadan and his cousin Ms Lorenza Marcos had allegedly been involved in a land dispute with landowner Ms Norma De Leon and her son-in-law, Mr Melanio Gazzingan, who is a Municipal Police Officer. However, Mr Melchor Bataller, another village policeman, has purportedly been arrested in connection with the murder as it is believed he made threatening remarks to Mr Yadan the day before his death.

On 8 December 2006, Mr Bong Gonzal, was the victim of an armed attack in Estancia, Iloilo, in which he suffered gunshot wounds to his arms and legs. Furthermore, on 11 December 2006, Mr Jesus Buth Servida, Mr Kenny Mari Severo and Mr Joel Sale were subjects of an attack carried out by an unidentified gunman which resulted in the death of Mr Servida and injuries to his two companions. The attack was apparently carried out at 6:15am in front of Gate No. 2 of the Yakazi-EMI (EDS Manufacturing Incorporated) factory in Imus, Cavite.

Grave concern is expressed that the killing of Mr Alberto Yadan and the attack on Mr Bong Gonzal may be related to their legitimate activities in defence of human rights, in particular their involvement in campaigns to advocate for genuine land reform and the defence of the rights of peasants and of other members of the community who are affected by land disputes. Concern is expressed that the attack on Mr Jesus Buth Servida, Mr Kenny Mari Severo and Mr Joel Sale may be related to Mr Servida's active involvement in the defence of labour rights. Furthermore, concern is expressed that a full and detailed investigation will be carried out in each of the cases described above,

as it is feared that they may represent a sustained campaign of harassment of human rights defenders in the Philippines.

While we do not wish to prejudge the accuracy of the information received, we would like to refer your Excellency's Government to the obligations arising under international law from the situation described. Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life. These provisions impose on Your Excellency's Government an obligation to take all reasonable steps to prevent any attacks, and particularly a lethal attack, against Mr. Gonzal, Mr. Servida, Mr. Mari Severo and Mr. Sale. This obligation, which benefits all persons under Your Government's jurisdiction, applies in a particular manner to them, as they are likely to be targeted for acting in defense of human rights.

In this respect, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 1 stating that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Article 12 paras 2 and 3 of the Declaration further provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We therefore urge your Government to take all necessary measures to guarantee that the right to life of Mr. Gonzal, Mr. Servida, Mr. Mari Severo and Mr. Sale is respected and that their right to promote the protection and realization of human rights and fundamental freedoms in safety and security is ensured.

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

1. Are the facts alleged in the above summary of the case accurate?
2. With regard to the allegation that the police failed to conduct a proper investigation of the crime scene and did not take into account any forensic evidence which may have been present, please provide the details, and where available the results, of any investigation or other inquiries carried out in

relation to the killing of Mr Alberto Yadan, including measures to protect the witnesses of the killing. If no inquiries have taken place, kindly give the reasons thereof.

3. Please provide the details, and where available the results, of any investigation, medical examinations and judicial and other inquiries which may have been carried out in relation to the death of Mr. Servida. If no inquiries have taken place or if they have been inconclusive, please explain why.

Response from the Government dated 8 January 2007

The Mission informed that it requested more information or details on the cases of Messrs. Alberto Yadan, Bong Gonzal, Jesus Buth Servida, Joel Sale and Kenny Mari Severo (such- as the specific places where the incidents occurred and the possible involvement of state actors in the latter four cases) to help ensure proper coordination with concerned authorities in the Philippines.

Philippines: Impunity for Killing of Leftist Activists

Violation alleged: Impunity

Subject(s) of appeal: 2 males, 1 female

Character of reply: cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Philippines. He would note that he reported on the overall pattern of killings of human rights defenders following a visit to the Philippines in February 2007 (A/HRC/8/3/Add.2). The SR would appreciate receiving updated information should any progress be made in achieving justice in these cases.

Urgent Appeal dated 20 April 2007 sent with the Special Rapporteur on the question of torture, Special Rapporteur on violence against women, its causes and consequences and Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding the situation of Mr **Nilo Arado**, national council member of Kilusang Magbubukid ng Pilipinas (Peasant Movement of the Philippines) and Chair of Bayan - Bagong Alyansang Makabayan, an alliance of human rights organizations which promote and defend the rights of peasants, workers, women, students and minorities; Ms **Maria Luisa Posa-Dominado**, an active campaigner for women's rights and a member of Selda, the Society of Ex-Detainees for Liberation, Against Detention and for Amnesty; and Mr **Jose Ely Garachico**, Secretary-General of the Panay of Karapatan.

According to the information received:

On 12 April 2007, Mr Arado, Ms Posa-Dominado and Mr Garachico were driving back home from the Antique province when they were ambushed by unidentified armed men in Oton town in Iloilo province. The gunmen opened fire at the vehicle and hit Mr Garachico in the left side of his neck. Mr Arado and Ms Posa-Dominado were forcibly taken to the van of the assailants who drove off. The van was later found charred in Barangay Guadalupe, Janiuay, 30 kilometres northwest of Iloilo City. The whereabouts of Mr Arado and Ms Posa-Dominado remain unknown as of today. As for Mr Ely Garachico, he was taken to the Iloilo hospital for surgery, and remains in critical condition.

Without prejudging the accuracy of the information received or the question whether the gunmen who carried out the attack and who appear now to be holding Mr Arado and Ms Posa-Dominado are military or police personnel or otherwise acting on behalf of your Government, we would like to recall that any act of enforced disappearance “constitutes a violation of the rules of international law guaranteeing, inter alia , the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life” (Declaration on the Protection of all Persons from Enforced Disappearance, GA Res. 47/133 of 18 December 1992).

We also note with concern that Mr Arado, Ms Posa-Dominado and Mr Ely Garachico belong to organizations which are consistently characterized by military officials as “front organizations” for armed groups and as “enemies of the State”. As the Special Rapporteur on extrajudicial, summary or arbitrary executions observed in his Preliminary note on this visit to the Philippines (A/HRC/4/20/Add.3*, pages 3-4), this “labeling” and “vilification” results in “a wide range of groups – including human rights advocates, labour union organizers, journalists, teachers unions, women’s groups, indigenous organizations, religious groups, student groups, agrarian reform advocates, and others – [being] considered to be legitimate targets”.

We are therefore concerned that this attack against Mr Arado, Ms Posa-Dominado and Mr Ely Garachico may be in reprisal for their work in defence of human rights in the Philippines. This concern is heightened by the fact that the victims reportedly met with the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions during his official visit in February 2007.

In this respect we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Furthermore, we would like to bring your Excellency’s attention to the following provisions of the Declaration:

- article 5 points b) and c) which provides that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups;

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to bring to your Excellency's attention the United Nations Declaration on the Elimination of Violence against Women which prohibits violence against women. The Declaration provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 4 (c & d) of the Declaration on the Elimination of Violence against Women notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

In the event that your investigations support the above allegations, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of Mr Arado, Ms Posa-Dominado and Mr Garachico are respected and that the accountability of any person guilty of the alleged violations is ensured. In particular, we ask your Excellency's Government to urgently determine the whereabouts of Mr Arado and Ms Posa-Dominado and the identity of their captors.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr Arado and Ms Posa-Dominado.

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

1. Are the facts alleged in the above summary of the case accurate?
2. What steps have been taken to determine the whereabouts of Mr Arado and Ms Posa-Dominado and the identity of their captors?

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the full details of any penal, disciplinary or administrative sanctions that may have been imposed on the alleged perpetrators.

Response from the Government dated 7 June 2007

The Government informed that an investigation conducted by the Iloilo City Police Office disclosed that on 12 April 2007 at around 9.30 p.m., Mr. Jose Ely Garachico, Secretary-General of KARAPATAN-Panay, was driving a Mitsubishi L-200 van with plate no. FEA-789, together with Ms. Maria Luisa Posa-Dominado, member of the New People's Army (NPA) Reaffirmist Group and spokesperson of the Society of Ex-Detainees for Liberation against Detention and for Amnesty (SELDA) and Mr. Nilo Arado, Chair of BAYAN-Panay. The group was traveling from Antique province to Iloilo City to attend the Anak-Pawis assembly in San Jose, Antique when they noticed a Delica van with plate no. FVF-463 tailing them from Guimbal, Iloilo. Upon reaching Barangay Cabanbanan, Oton, Iloilo, they were overtaken and blocked the van. At that juncture, about three unidentified men wearing fatigue pants and armed with pistols alighted from the vehicle. One of them shot Mr. Garachico in the neck while the other smashed the left side window of the L200 van. The men pulled out Mr. Garachico from the L200 van and left him along the highway then drove said vehicle towards Iloilo City taking with them Ms. Posa-Dominado and Mr. Arado. Concerned residents in the area brought Mr. Garachico to the hospital for medical treatment. On the following day, the L200 van was found burned at the sugarcane plantation in Barangay Janiuay, Iloilo City. Verification made with Land Transportation Office (LTO) Region 6 revealed that the Delica van plate no. FVF-463 was registered to a passenger jeepney. The owner of the jeepney denied owning a Delica van and told the police that said plate number was lost a long time ago and had reported the same to the LTO. A petition of Writ of Habeas Corpus for Ms. Posa-Dominado and Mr. Arado was filed by the counsels for the petitioners before the regional trial court (RTC) branch 35, Iloilo City against the Armed Forces of the Philippines (AFP). Continuous investigation is being undertaken by the Police Regional Office 6 to locate the whereabouts of Mr. Arado and Ms. Posa-Dominado and for the possible identification and apprehension of the suspects. No penal, disciplinary or administrative sanctions have been imposed as the identity of the suspects are not yet established.

Philippines: Killing of Charlie Solayao and Mario Auxilio

Violation alleged: Impunity

Subject(s) of appeal: 2 males (human rights defenders)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of the Philippines and looks forward to receiving the results of any investigations that take place.

Allegation letter dated 26 July 2007 sent with the Special Representative of the Secretary-General on the situation of human rights defenders

We would like to bring to your Government's attention information we have received in relation to Charlie Solayao, the Vice-Chairperson of Kadamay, a community organisation dedicated to the protection of the rights of the urban poor, and Mario Auxilio, the Secretary-General of Bayan Muna, a farmers' rights organisation.

According to information received:

At approximately 1am on 17 July 2007, Charlie Solayao and his wife were standing near their home waiting to be collected and taken to Old Road, Sagkahan, Tacloban City when a motorcycle carrying two men appeared. The driver wore a hooded balaclava while the other man was carrying a gun and began shooting at Mr Solayao. The two men then drove off on the motorcycle in the direction of Tacloban City. The victim's family took him to the Divine World Hospital where he died 10 hours later. At the time of his death, Mr Solayao was Vice-Chairperson of the community organisation, Kadamay, and was involved in campaigns protecting street-vendors in Tacloban Market and the urban communities in the metro. Last month, Mr Solayao reportedly received a visit from an agent in the Philippines Military, who advised him that he would be killed if he did not cease his activities. Mr Solayao was scheduled to have a meeting with the human rights organisation Katungod-Sinirangang Bisayas, based in Tacloban City, in order to discuss this warning and the possible dangers which he may have been facing.

On 15 June 2007, Mario Auxilio was having an informal meeting in front of a store in Barangay Poblacion, Bien Unido, in order to organise a meeting with the farmers of Barangay Panaghiusa in Trinidad. Mr Auxilio noticed Hilario Diola, a military agent whom he recognised as Mr Auxilio had provided him with medical assistance in the past. Mr Diola was accompanied by someone unknown to Mr Auxilio. Their presence made him nervous and he decided to end his meeting and make his way home. As he was mounting his motorcycle, Mr Diola began shooting at him. Mr Auxilio was first taken to Talibon District Hospital before being transferred to the Celestino Gallares Memorial Hospital in Tagbilaran City where he died from gunshot wounds at approximately 10.00 on 17 June. Prior to his death, Mr Auxilio had been leading protests against the alleged abuses committed by the 15th Infantry Battalion. Two days before he was shot, he had led a protest against tests for oil exploration in the Bohol Strait. For the past year, he and his organisation, Bayan Muna, had been the object of intimidation and defamation allegedly instigated by the Mata na Bol-anon Movement, a group reported to have connections with the military.

Concern is expressed that the killings of Charlie Solayao and Mario Auxilio may be related to their peaceful human rights activities, in particular their work to protect the rights of the urban poor and farmers. Further concern

is expressed for the physical and psychological integrity of their families and colleagues.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to its obligations reflected in a variety of international instruments. Article 6 of the International Covenant on Civil and Political Rights, to which the Philippines is a party, provides that no one shall be arbitrarily deprived of his or her life. In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

We would also like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring your Excellency's attention to the following provisions, and in particular:

- Article 5 points b) and c) which provides that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- Article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or

individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Government to take all necessary measures to guarantee that the accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

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

Response from the Government of the Philippines dated 19 September 2007

The Philippine Government responded that regarding the case involving Mr Solayao, no penal or disciplinary sanctions had been imposed, as the identities of the suspects had not yet been established. This was also the case in the investigation of the killing of Mr Auxilio; no penal or disciplinary sanctions have been imposed, as the Bien Unido Police Station was still in the process of obtaining sufficient evidence against the suspect.

Philippines: Death in Custody Manuel Merino

Violation alleged: Death due to attacks or killings by security forces

Subject(s) of appeal: 1 male (human rights defender)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of the Philippines and would appreciate receiving an update on the status of this investigation.

Allegation letter dated 21 February 2008 sent with the Special Rapporteur on the question of torture, Special Rapporteur on violence against women, its causes and consequences and Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding Ms Sherlyn Cadapan, Ms Karen Empeño and Mr Manuel Merino. Ms Sherlyn Cadapan is a community organiser with the youth group Anakbayan and works in a voluntary capacity for Alyansa ng Magbubukid sa Bulacan (Alliance of Peasants in Bulacan – AMB), an organization dedicated to the promotion and protection of peasant rights based in Central Luzon. Ms Karen Empeño is a member of the League of Filipino Students (LFS) and Mr Manuel Merino was a local peasant and a member of the Alyansa ng Magbubukid sa Bulacan. All three individuals were the subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 5 October 2007, following their kidnapping on 26 June 2006.

According to new allegations received:

Ms Sherlyn Cadapan and Ms Karen Empeño are currently in detention at the Camp Tecson barracks in San Miguel, Bulacan. Ms Cadapan, in addition to being forced to do the laundry for the camp every day, was sexually assaulted by soldiers named Mickey, Billy, and Donald. Donald, a.k.a. Master Sgt. Donald Caigas, is a suspect in the killing of human rights defender and community leader, Eddie Gumanoy, in April 2003, and is believed to be identifiable by the tattoo “24th IB” on his shoulder.

Previously Mr Manuel Merino, Ms Sherlyn Cadapan and Ms Karen Empeño had been held at the 24th Infantry Battalion (IB) camp in Limay, Bataan, where Ms Sherlyn Cadapan was tied to a bench while her feet were raised and soldiers poured water over her and electrocuted her. When Ms Sherlyn Cadapan admitted that Ms Karen Empeño had helped her to write a letter to her mother-in-law, the latter was taken outside by soldiers and witnesses report hearing her cries. The following day, the witnesses heard the soldiers recount that they had raped her with wooden sticks.

Ms Sherlyn Cadapan and Ms Karen Empeño were not seen again after June 2007. On 21 November 2007, Ms Sherlyn Cadapan's mother-in-law, Ms Adoracion Paulino, testified to receiving death threats from soldiers visiting her home and interrogating her.

Mr Manuel Merino was killed, reportedly following the order issued by Retired Major General Jovito that Mr. Merino be burned to death.

In view of the above allegations, grave concern is expressed for the physical and psychological integrity of Ms Sherlyn Cadapan and Ms Karen Empeño. Furthermore, concern is expressed that the kidnapping and detention of Ms Sherlyn Cadapan, Ms Karen Empeño, and Mr Manuel Merino may have been directly related to their activities in defense of human rights.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

We would also like to bring to your Government's attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. Principles 9 to 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council resolution 1989/65 of 24 May 1989 ("Prevention and Investigation Principles") oblige Governments to conduct a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary or summary executions, to make public the results of these inquiries and to ensure that persons identified by the investigation as having participated in such executions in any territory under their jurisdiction are brought to justice. Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17).

We should also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the above allegations of rape and other abuses by military officers. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We would further like to draw your Government's attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

Furthermore, we recall Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. We would further like to bring to Your Excellency's attention Article 4 (c & d) of the same Declaration, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

We would further like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to

promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration, and in particular to article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Ms Sherlyn Cadapan and Ms Karen Empeño in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Have complaints been lodged?
3. Please provide information concerning the legal grounds for the arrest and detention of Ms Sherlyn Cadapan and Ms Karen Empeño, and how these measures are compatible with international norms and standards as stated, inter alia, in the International Covenant on Civil and Political Rights and the Declaration on human rights defenders.
4. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the aforementioned reports of ill-treatment and torture of Ms Sherlyn Cadapan and Ms Karen Empeño, and the

death of Mr Manuel Merino, and how they are compatible with international norms and standards as stated, inter alia, in the International Covenant on Civil and Political Rights and the Declaration on human rights defenders. If no inquiries have taken place, or if they have been inconclusive, please explain why.

Response from the Government of the Philippines dated 26 February 2008

The Government referred to an initial reply to these cases that was sent to the Special Representative on the situation of human rights defenders on 8 November 2007, in response to an urgent appeal sent by the latter. The Government stated it would submit any new information it would receive with regard to these allegations from the authorities to the Office.

Response from the Government that was sent to the Special Representative on the situation of human rights defenders on 8 November 2007

The letter stated that, according to a witness who refused to be identified, the Ms Sherlyn Cadapan, Ms Karen Empeño and Mr Manuel Merino were abducted by six unidentified men, believed to be military agents. A complaint had not been lodged and the alleged perpetrators had not been identified. An investigation conducted by Hagonoy, Bulacan Police Station revealed that on 26 June 2006 at about 3.25pm, members of the Hagonoy, Bulacan Police Station accompanied Ms Paulino Purok 6, Barangay San Miguel, Hagonoy, Bulacan, to verify her report of the abduction.

The following day, at around 9.20pm, Mr Mon L. Mangaran of Malolos, Bulacan, and Mr Antonio S. Idanan of Meycauayan, Bulacan, reported to the Hagonoy, Bulacan Police Station that while they were conducting a fact-finding mission at the place of the abduction, four unidentified males were allegedly seen spying on them, however, a certification dated 29 June 2006 issued by Barangay San Miguel Chairman Guillermo L. Fajardo, stated that there was no recorded incident regarding the abduction of the three.

On 3 July 2006, verification at the UP Los Banos revealed that Sherlyn and Karen were not students at said university. However, a letter from the President of UP Diliman, confirmed that Karen was a BA Sociologist there and Manuel was a respondent to the thesis allegedly being completed by Karen. A certificate also stated that Sherlyn was a student under the B.Sports Science program in 1994-1995 and 2000-2001. It was also stated most of the potential witnesses were allegedly staying at the Refugee Centre in Bulacan where letters had been sent but remained unanswered.

A petition for habeas corpus was filed before the Supreme Court on 17 July 2006 by the relatives of Sherlyn and Karen requesting that a Writ of Habeas Corpus be issued directing the respondents: Maj. Gen. Romeo Tolentino, Maj. Gen. Jovito Palparan, Lt. Col. Rogelio Boac, Lt. Francis Samson and Arnel Enriquez to bring the bodies of the three before the court.

However, on 29 May 2007, the petition was dismissed, there being no strong evidence that the missing persons were in the custody of the respondents. The

Provincial Intelligence and Investigation Branch of Bulacan Police Provincial Office were later able to contact Mrs Erlinda Cadapan, mother of Sherlyn. She agreed to grant an appointment later but all attempts to contact her had failed. Mr Ceferino Manzano, Barangay Councilor and neighbour, told the investigators that Mrs Paulino, Sherlyn's mother-in-law was still in Los Banos, Laguna, and stated that he had not seen Sherlyn since her abduction. On 25 September 2007, a case conference was conducted at the Task Force Usig Secretariat and directed the investigators to exert more effort in gathering relevant information from potential witnesses in the investigation.

Russian Federation: Execution of Adam Israilov, Aslanbek Israilov, Mr. Turpal Israilov and Aslanbek Dzhabrailov

Violation alleged: Deaths due to attacks or killings by security forces; Impunity

Subject(s) of appeal: 4 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Russian Federation. The SR would request that the Government of the Russian Federation keep him informed of the progress of the investigative and criminal proceedings.

Allegation letter dated 25 January 2007

I would like to draw your Excellency's attention to the lack of progress in the investigation of the deaths of Mr. **Adam Israilov**, Mr. **Aslanbek Israilov**, Mr. **Turpal Israilov** and Mr. **Aslanbek Dzhabrailov** who were reportedly killed by Russian federal forces in the village of Gekhi-Tshu, Urus-Martanovskij district, in the Chechen Republic on 7 February 2000 in the aftermath of a military operation.

According to the information received:

The four men who had hidden in a basement were reportedly arrested by Russian soldiers who brought them to a courtyard located in Shkolnaya Street no. 74. There, the soldiers checked if they belonged to the troops opposed to the Federal forces and if they were bearing weapons. Ten minutes later, shots were reportedly heard in the courtyard. The dead bodies of the four men were found in that same courtyard. They all had been shot while Aslanbek Dzhabrailov and Aslanbek Israilov had also received a knife wound in the heart.

On 8 February 2000, members of the Temporary Internal Affairs office and of the Prosecutor's office of Urus-Martanovskij district went to the village of Gekhi-Tshu to interrogate victims and to draw a plan of the incident. A week later, an investigator of the prosecutor's office, Mr. A.A. Malyuk, informed the victim's relatives that criminal proceedings had been initiated. However, it is

reported that the opening of a criminal case (under no 24037) only took place much later on 14 July 2000 and that the investigation was suspended shortly afterward on 4 December 2000 as the persons responsible could not be identified.

To my knowledge, the investigation was never re-opened despite the repeated complaints lodged by the victim's relatives since February 2000.

While I do not wish to prejudge the accuracy of these allegations, I urge your Excellency's Government to take effective measure to reopen those investigations and to identify and bring to justice those responsible.

In this respect, I would like to recall that, as reiterated in Commission on Human Rights Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation (...) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, (...) and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". This obligation, affirmed also in the jurisprudence of the Human Rights Committee (see, e.g. the Committee's views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8.), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

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

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

Response from the Government of the Russian Federation dated 15 March 2007

According to the information provided by the Office of the Procurator-General of the Russian Federation, on 7 February 2000, in the village of Gekhi-Chu in Urus-Martan district of the Chechen Republic soldiers of the federal forces conducted a special operation to identify the participants in illegal armed formations. During the operation,

there were hostilities between members of an illegal armed formation, who had sought shelter in a housing estate, and soldiers of the federal forces; as a result, one soldier died. In the return fire, members of the illegal armed formation were killed. Four inhabitants of the village of Gekhi-Chu, the brothers Adam, Aslanbek and Turpal Israilov and Aslanbek Dzhabrailov, also received fatal gunshot wounds.

On 14 July 2000, the Urus-Martan district procurator's office opened a criminal case (under No. 24037) on the basis of evidence of an offence contrary to article 105, paragraph 2 (a), of the Criminal Code of the Russian Federation (Murder of two or more persons). The case is currently being handled by the investigator of the Urus-Martan district procurator's office, grade 2 lawyer B.K. Madaev.

The information contained in Mr. Alston's letter concerning the termination of the criminal case is incorrect.

The pretrial investigation in the case in question was not terminated but was repeatedly suspended on the basis of article 208, paragraph 1 (1), of the Code of Criminal Procedure of the Russian Federation (Failure to identify persons liable to charges). The last suspension decision was taken on 24 September 2006.

On 1 February 2007, the decision to suspend the investigation was overturned, and instructions were given to conduct investigative actions and inquiries in the criminal case.

The investigation of the criminal case is being monitored by the procurator's office of the Chechen Republic.

Saudi Arabia: Death Sentence of Sufun Muhammed Ali Ahmed al-Zafifi

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 24 January 2007 sent with the Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the question of torture

We would like to draw the attention of your Excellency's Government to the case of **Sufun Muhammed Ali Ahmed al-Zafifi**, a Yemeni national who is reportedly at risk of imminent execution. According to the information received:

He was arrested on 25 April 2006 and allegedly confessed to the abduction and rape of a boy. He was convicted and sentenced to death on 11 July 2006

and his sentence was upheld on appeal. We received reports alleging that his confession was extracted under duress, that the trial took place behind closed doors and that he was not afforded defense counsel. Our understanding is that the only remaining option for Mr al-Zahifi is to seek a pardon from His Majesty, the King.

If these allegations are correct there would be grounds for serious concern. We would therefore be grateful if your Excellency's Government could provide us with information indicating whether or not the defendant in this case was given the right to formal representation by a lawyer, and providing details of any such access. In addition, we wish to establish whether the proceedings were open to observers including representatives of the Government of Yemen. Finally, we would like to receive information as to the nature of any right to an effective appeal which was exercised in this case. Please also provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that the defendant was subjected to torture or ill-treatment while in pre-trial detention. If no enquiries have taken place, or if they have been inconclusive, please explain why.

Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. The Commission on Human Rights has consistently requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment. Those standards include, in particular, the following:

1) the "sentence of death may be imposed only for the most serious crimes" (Article 6(2) ICCPR), it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences (Paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984).

2) "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10); these guarantees include the right to have access to a defense counsel of one's own choosing, or if the person does not have legal assistance to have a defense counsel assigned to him, and the right to be tried publicly.

3) "anyone sentenced to death shall have the right to seek pardon or commutation of the sentence." (Article 6(4) ICCPR).

In addition, transparency is one of the fundamental due process safeguards contributing towards efforts to prevent the arbitrary deprivation of life (see my recent report Transparency and the Imposition of the Death Penalty, E/CN.4/2006/53/Add.3). In order to enable us to carry out the mandate entrusted to us, we would be grateful if you would provide us with the following information:

(a) For which offences does the law currently provide for the imposition of the death penalty?

(b) Which courts can impose the death sentence? What appeals and extraordinary remedies are available to a person sentenced to death?

(c) Please provide a complete list of the persons currently in detention under a death sentence, with the dates of their sentence, the offences of which they were found guilty, and the remedies exhausted by them as well as those still available to them.

(d) What proportion of those executed were foreigners?

Furthermore, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Saudi Arabia: Death Sentences of Ranjith de Silva, Victor Corea, Sanath Pushpakumara and Sharmila Sangeeth Kumara

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 4 males (foreign nationals)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Saudi Arabia regarding the executions of Ranjith de Silva, Victor Corea, Sanath Pushpakumara and Sharmila Sangeeth Kumara. The SR would note, however, that the information provided in no way refutes allegations that the persons executed were tried without legal representation and sentenced to death for offences not among those internationally recognized as the “most serious crimes” for which a death sentence might be imposed.

The SR would also note that he would continue to appreciate information on what percentage of those sentenced to death and executed are foreigners.

Allegation letter dated 5 April 2007 sent with the Special Rapporteur on the independence of judges and lawyers

We would like to draw the attention of your Government to information we have received regarding the execution on 19 February 2007 of four Sri Lankan citizens, Messrs. **Ranjith de Silva, Victor Corea, Sanath Pushpakumara and Sharmila Sangeeth Kumara**. The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special rapporteur on the human rights of migrants had previously raised their concerns about this case in a communication to your Government of 13 April 2005, which unfortunately has remained without reply.

In the previous communication we explained that, according to the information received, three Sri Lankan migrant workers – Mr. Victor Corea, Mr. Ranjith de Silva and Mr. Sanath Pushpakumara – had been involved in a series of armed robberies and had been arrested by the Riyadh police on 10 March 2004. In October 2004 they were sentenced to death on charges of possession of illegal firearms and attempted robbery by the Saudi Arabian High Court. Their sentences were reportedly upheld in March 2005 and an appeal for mercy was at the time pending before His Excellency, the King of Saudi Arabia.

On the basis of the information in our possession, we expressed the concern that “the three men were sentenced to death after trials that appear[ed] to have fallen short of international fair trial standards. It is reported that they did not have any legal representation during their trials, although a translator was provided. The translation of proceedings is no substitute for adequate legal representation as required by international standards. In addition, it is alleged that after their trial, the three men were asked to sign a document in Arabic, stating their acceptance of the death sentence which only Mr. Silva reportedly refused to sign.”

More detailed reports we have recently received have added the name of a fourth defendant in the same case, Sharmila Sangeeth Kumara, state that the execution took place on 19 February 2007, and confirmed the concerns raised two years ago with regard to the lack of due process. It is reported that:

Around nine months after their arrest in March 2004, an official in al-Ha’ir prison where the four men were held informed them that they had a court hearing. The hearing lasted around three hours. The judge interrogated the four men, who were allowed only to speak in reply to his questions. The judge also asked whether they had suffered beatings during interrogation, to which they replied that they had. Minutes were taken and proceedings were interpreted, but no prosecutor was present and the defendants did not have legal or consular assistance. At no time were the defendants told that they might face the death penalty, nor were they ever informed that they had a right to a lawyer or a right not to incriminate themselves.

Several months after the first hearing, prison officials brought the four defendants to court a second time, again without prior notice. At this second hearing, two judges conferred for 20 minutes, then sentenced all four to death.

In response to a query from the court, all four defendants refused to accept the verdict, and the court sent the case for review to the Court of Cassation. The four men were unaware how to conduct an appeal and were not invited to make any submissions to the Court of Cassation or informed whether there would be any hearing. Three months later, the men were advised by a judge in a third trial session that the cassation court had upheld the verdict. No copy of the judgment was given to the four defendants.

The four defendants managed to contact the Sri Lankan embassy from prison after the trial. The Sri Lankan diplomats informed them that it was too late to appoint a lawyer and that instead they would issue an appeal for clemency.

On 19 February 2007, however, a royal order affirmed the death sentence. Ranjith de Silva, Victor Corea, Sanath Pushpakumara and Sharmila Sangeeth Kumara were executed on the same day.

While we do not wish to prejudge the accuracy of the allegations reported above, we respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants “a fair and public hearing before an independent and impartial tribunal” (Article 10 of the Universal Declaration on Human Rights) allows no derogation. A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings” and principle 5; “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”

The right to a fair hearing also requires that defendants be given information on the proceedings in which their culpability and sentence will be determined, that they be given adequate notice of hearings, and that they be given adequate time and facilities to prepare their defense.

International law further requires that the death penalty be imposed only for the most serious crimes. We certainly do not underestimate the seriousness of the crime of armed robbery. However, according to the information received, only one of the four defendants, Mr. Corea, has in fact caused bodily harm in the course of a robbery. The two persons shot by Mr. Corea have reportedly recovered from their wounds, and one of the victims, an Indian man named Muhi al-Din, reportedly told the judge in a civil suit that he did not seek any damages and asked for clemency for the four Sri Lankan men after learning that they had been sentenced to death. If this information was confirmed, doubts could be raised as to whether the offences committed by the four defendants actually attained the seriousness required by international law for the imposition of the death penalty.

It is our responsibility under the mandate provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate? In particular, is it accurate that the defendants were not assisted by lawyers at any stage of the proceedings? Is it accurate that the defendants learned that they were charged with offences potentially carrying the death sentence only when that sentence was in fact imposed? Is it accurate that the defendants were not given written copies of the judgments?

2. As stated in our communication of 13 April 2005, we would appreciate knowing if the proceedings were open to observers, including particularly representatives of the Government of Sri Lanka.
3. Were the proceedings in this case in accordance with the laws of the Kingdom of Saudi Arabia?
4. We would finally like to reiterate the request by the Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the independence of judges and lawyers in a communication to your Excellency's Government of 24 January 2007 for clarification of which offences carry the death penalty in the Kingdom of Saudi Arabia, which courts can impose it, and what percentage of those sentenced to death and executed are foreigners. The latter question is particularly relevant in the light of the reports concerning the present case of execution of four migrant workers.

Response from the Government of Saudi Arabia dated 16 July 2007

1. The charges brought against the said persons, namely burglary and armed robbery, the possession of unlicensed firearms and the firing of shots at a number of persons, were substantiated by cogent and conclusive evidence of their commission of the crime, including their legally certified confessions, the medical reports, the factual report on the crime, identification of the weapons used in its commission, the report on the examination of the accused, and reports on a visit to, and inspection of, the scene of the crime.
2. Articles 155 and 182 of the Code of Criminal Procedure stipulates that court hearings should be held in public and judgements should be read out in detail at a public hearing. Article 140 of the Code further stipulates that a person accused of a major offence should appear in person before the court, without prejudice to his right to defence counsel. Accordingly, judicial proceedings are open to observers.
3. Judicial proceedings in the Kingdom are governed by a number of regulations (laws), the most important of which are the Basic Law, the Code of Criminal Procedure, the Code of Civil Procedure, the Statutes of the Public Investigation and Prosecution Department and the Code of Practice for Lawyers. In this case, as in others, the judicial procedures were strictly observed with meticulous care in all their formal and legal aspects and were conducted in accordance with the above-mentioned regulations.
4. Death sentences are handed down by the general courts in cases entailing the fixed penalties prescribed in the Islamic Shari'a and in cases of lex talionis and crimes involving repeated offences of drug smuggling and trafficking.

Saudi Arabia: Death Sentence of Suliamon Olyfemi

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent Appeal dated 20 April 2007 sent with the Special Rapporteur on the human rights of migrants, Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding the case of Mr. **Suliamon Olyfemi**, a citizen of Nigeria, who is reportedly at imminent risk of execution. The case of Suliamon Olyfemi was previously brought to the attention of your Excellency's Government (together with the cases of 12 other Nigerian migrant workers) by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture in a communication dated 30 November 2004. Regrettably, their communication has remained without reply.

According to the communication of 30 November 2004, Suliamon Olyfemi and 12 other Nigerian migrant workers resident in Jeddah,

“[...] were among hundreds detained in Jeddah on 29 September 2002 after a policeman was killed in a fight between local men and African nationals. All the other men arrested on that occasion have been deported, including 21 who served prison sentences ranging from six months to two years and flogging.

Subsequent to their arrest, the 13 Nigerian nationals were tortured and ill-treated, including being hung upside down and beaten and subjected to electric shocks to the genitals. Since their arrest over two years ago, the men have not had access to a lawyer or consular assistance. Moreover, translators were present on only two of the four previous court appearances, and all proceedings and court documents are in Arabic.

On 22 November 2004, a hearing in the case of the 13 men took place before three judges in a closed session, without the assistance of a lawyer, a consular representative or adequate translation facilities. They could not fully understand the proceedings, which were conducted in Arabic, and were not able to fully understand whether the hearing concerned the prolongation of their detention or constituted their trial.”

According to information received since then:

Suliamon Olyfemi was sentenced to death at a closed trial in May 2005. The twelve other Nigerian men were sentenced to prison terms and corporal punishment. During the trial, Suliamon Olyfemi and his co-defendants neither

had access to legal representation nor to consular assistance, nor did they benefit from adequate translation. During interrogation they had been told to put their fingerprints, which can act as a signature, on statements written in Arabic, which they do not read. It is possible that these statements were used as evidence against them during the trial proceedings. Staff from the Nigerian consulate in Jeddah attempted to visit the men in prison on 19 May 2005, but were not allowed to see them. The death sentence imposed on Suliamon Olyfemi has recently been upheld by the Court of Cassation and ratified by the Supreme Judicial Council.

While we do not wish to prejudge the accuracy of the allegations reported above, we respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants “a fair and public hearing before an independent and impartial tribunal” (Article 10 of the Universal Declaration on Human Rights) allows no derogation. A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings” and principle 5; “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”

The right to a fair hearing also requires that defendants be given information on the proceedings in which their culpability and sentence will be determined as further stated in the Basic Principles on the Role of Lawyers: “It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.” (Principle 21).

We would also like to remind your Government that article 15 of the Convention against Torture provides that, “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Furthermore, in paragraph 4 of Resolution 2005/39, the Commission on Human Rights urges States ensure that statements which are established to have been made as a result of torture are not admitted as evidence.

As for the right to a “public hearing”, while courts may exclude the public from all or part of a trial where publicity would imperil national security or other legitimate interests (e.g. the privacy rights of a minor), the judgment rendered in a criminal case must be made public, allowing only the narrowest of exceptions which clearly find no application in the case at issue.

In this respect, it should be noted that secrecy surrounding trial, sentence and post-conviction proceedings also makes the effective exercise of the right to appeal the

sentence and to seek its commutation impossible. Considering the irrevocable nature of capital punishment, these rights are all the more fundamental. Only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Suliamon Olyfemi are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the execution until the complaints regarding his right to a fair and public hearing by a competent, independent and impartial tribunal established by law have been thoroughly investigated and all doubts in this respect dispelled.

It is our responsibility under the mandate provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate? In particular, is it accurate that Suliamon Olyfemi was not assisted by lawyers at any stage of the proceedings? Is it accurate that he was asked to sign documents in Arabic without being provided a (written) translation? What use was made of these documents? Is it accurate that Nigerian consular authorities were denied access to Suliamon Olyfemi? At what stage did he receive a copy of the judgment in his case? Was the judgment translated into a language he can understand?
2. Were the proceedings in this case in accordance with the laws of the Kingdom of Saudi Arabia?
3. We would finally like to reiterate the request by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers in communications to your Excellency's Government of 24 January 2007 and 5 April 2007 for clarification of which offences carry the death penalty in the Kingdom of Saudi Arabia, which courts can impose it, and what percentage of those sentenced to death and executed are foreigners. We have received reports according to which in 2005 out of 86 executions known to have taken place in Saudi Arabia 39 concerned foreigners, in the year 2006 27 out of 39, and in 2007 (to date) 15 out of 34 executions concerned foreigners. If these figures were correct, more than 50 percent of those executed would be foreigners. Can your Government confirm or correct these statistics?

Saudi Arabia: Death Sentence of Dhahian Rakan al-Sibai'i

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 25 May 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Dhahian Rakan al-Sibai'i, who was reportedly sentenced to death for a crime committed when he was still a minor. According to the information received:

Both the murder attributed to Dhahian Rakan al-Sibai'i and his trial took place while he was under 18 years of age. He was held in a juvenile detention facility until he was 18 years old, when he was moved to al-Taif Prison. The Pardon and Reconciliation Committee is reportedly facilitating negotiations with the victim's family to obtain a pardon without compensation or against payment of blood money. Moreover, reports indicate that the death sentence still needs to be ratified by the Supreme Judicial Council.

While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention to the fact that the execution of Dhahian Rakan al-Sibai'i would violate international legal obligations of the Kingdom of Saudi Arabia. In particular, the execution would be explicitly contrary to Article 37(a) of the Convention on the Rights of the Child which provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. Saudi Arabia is a party to the Convention on the Rights of the Child and is thus bound by this provision.

On this basis, we urge your Excellency's Government to expeditiously set aside the death sentence imposed on Dhahian Rakan al-Sibai'i. While we appreciate your Government's reported efforts to facilitate a pardon from the victim's family, such efforts do not satisfy your Government's obligations under international law considering the clear ban on the use of the death penalty against child offenders in Article 37(a) of the Convention on the Rights of the Child.

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

1. Are the facts alleged above accurate? If not, please provide information and documents proving their inaccuracy.
2. If the above facts are accurate, please provide details of any further developments in this case.

Given the urgency of the matter, we would appreciate an expeditious response on the initial steps taken by your Excellency's Government to safeguard the rights of Dhahian Rakan al-Sibai'i.

Saudi Arabia: Death Sentence of Rizana Nasik

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 female (juvenile offender)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Saudi Arabia regarding the death sentence of Rizana Nasik. The SR would request that he be informed of the decision of the Court of Cassation and, if applicable, of the Supreme Council of the Judiciary.

The SR would also note that imposing capital punishment for offences committed by persons below eighteen years of age violates the legal obligations Saudi Arabia assumed when it acceded to the Convention on the Rights of the Child on 26 January 1996. The application of "regulations . . . stipulate[ing] that a person can be held criminally responsible for acts that he commits after reaching the age of majority, which differs from one individual to another" is inconsistent with that treaty.

Urgent Appeal dated 28 June 2007

I would like to draw the attention of your Government to information I have received regarding Ms. Rizana Nasik, who was reportedly sentenced to death for a crime committed when she was still a minor.

According to the information received:

Rizana Nasik is a Sri Lankan migrant worker in the Kingdom of Saudi Arabia. On 30 May 2007, the Daw Admi High Courts reportedly found her guilty of having strangled the 4-month-old child of the family for whom she had worked as a housemaid and sentenced her to death. The murder reportedly took place in February 2005 when Rizana Nasik was only 17 years old. It would appear that she had falsified her birth date on her passport in order to enter Saudi Arabia to work.

It is alleged that Rizana Nasik could not afford the assistance of a lawyer during her trial and was not provided with legal aid by the authorities. The 30-day deadline to appeal her judgment and sentence reportedly expires on 30 June 2007.

While I do not wish to prejudge the accuracy of the allegations regarding this specific case, I would like to draw your attention to the fact that the execution of Rizana Nasik would violate international legal obligations of the Kingdom of Saudi Arabia. In particular, unless the doubts regarding her age at the time of the crime can be dispelled, the execution would be explicitly contrary to Article 37(a) of the Convention on the Rights of the Child which provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. Saudi Arabia is a party to the Convention on the Rights of the Child and is thus bound by this provision.

Moreover, I respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants “a fair and public hearing before an independent and impartial tribunal” (Article 10 of the Universal Declaration on Human Rights) allows no derogation. A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, I would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Principle 6 is particularly pertinent to the present case: “Any such persons [charged with a criminal offence] who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.”

On this basis, I urge your Excellency's Government to expeditiously set aside the death sentence imposed on Rizana Nasik and provide her with effective legal counsel in view of a renewed trial, free of charge if she lacks means of her own. I would also urge your Excellency's Government to seek the cooperation of the Government of Sri Lanka in order to clarify the question of her age at the time of the crime.

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

1. Are the facts alleged above accurate? If not, please provide information and documents proving their inaccuracy.
2. If the above facts are accurate, please provide details of any further developments in this case.

Given the urgency of the matter, I would appreciate an expeditious response on the initial steps taken by your Excellency's Government to safeguard the rights of Rizana Nasik.

Response from the Government of Saudi Arabia dated 21 January 2008

In this regard, the competent authorities in the Kingdom of Saudi Arabia have indicated that the above-mentioned woman was accused of killing the child, Kayed bin Nayef Al-Utaibi, whose heirs petitioned the competent court for application of the

penalty of *lex talionis*, in conformity with the provisions of the Islamic Shari'a, which is the law in force in the Kingdom. In accordance with the Code of Criminal Procedure, cases of this type are heard by three judges in the general courts, after which they are referred to the Court of Cassation for review by five judges. Even if the judgement is upheld by the Court of Cassation, it does not become final until it has been ratified by the plenary body of the Supreme Council of the Judiciary, consisting of five judges. With regard to the woman's young age (17 years) at the time of commission of the crime, the regulations applied in the Kingdom stipulate that a person can be held criminally responsible for acts that he commits after reaching the age of majority, which differs from one individual to another and might exceed 18 years. With regard to the above-mentioned woman's petition for commutation of her sentence, the judgement handed down against her has not become final since it has not yet been ratified by the Court of Cassation or the Supreme Council of the Judiciary. In fact, the judgement is still being deliberated between the Court of Cassation and the court by which it was handed down. Hence, this case is still under consideration by the judiciary.

Saudi Arabia: Death Sentence of Faisal Fouzan al-Otaibi

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 9 July 2007

I am writing concerning Faisal Fouzan al-Otaibi who has been sentenced to death and is at risk of execution. According to information I have received:

Mr al-Otaibi was convicted of the offence of negligent manslaughter after causing a fatal road accident resulting in the 2005 deaths of three men and leaving two others injured. The accident reportedly occurred when he performed a high speed manoeuvre in his car. It is my understanding that his appeal was referred to the Court of Cassation on 24 June, 2007, after which ratification by the Supreme Judicial Council would be required.

Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights provides that the "sentence of death may be imposed only for the most serious crimes".

It is my view that the death penalty as applied in this case does not fall within the category of the “most serious crimes” for which international law countenances its possible application. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984). In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee (HRC) has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I observed in my last report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). I would note that whilst the offence for which Mr al-Otaibi has been convicted had lethal consequences, no intention to kill has been proven.

In light of this review of basic human rights norms recognized by the international community, I would respectfully request Your Excellency’s Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law.

Saudi Arabia: Death Sentence of Hadi ‘Ali Suliaman al-Yami

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 24 October 2007

I would like to draw the attention of your Government to information I have received regarding Mr. Hadi ‘Ali Suliaman al-Yami, reportedly sentenced to death and at imminent risk of execution.

According to the reports received:

Hadi ‘Ali Suliaman al-Yami, was originally sentenced to 10 years imprisonment for helping a man escape from prison, but his sentence was said to have been changed unexpectedly to death, possibly following a secret appeal process. He is reportedly due for execution today.

It is my view that the death penalty as applied in this case does not fall within the category of the “most serious crimes” for which international law countenances its possible application. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984). In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee (HRC) has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I observed in my last report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

Moreover, I respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants “a fair and public hearing before an independent and impartial tribunal” (Article 10 of the Universal Declaration on Human Rights) allows no derogation.

In light of this review of basic human rights norms recognized by the international community, I would respectfully request Your Excellency’s Government to take all necessary steps to avoid an execution that would be inconsistent with accepted standards of international human rights law. In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government, including confirmation that Hadi ‘Ali Suliaman al-Yami is still alive.

It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all such cases brought to my attention. Since I am expected to report on this case to the Council I would be grateful for your cooperation and your observations. I undertake to ensure that your Government’s response is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

Saudi Arabia: Death Sentences of Sheikh Mastan alias Mohammed Salim and Hamza Abu Bakir

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Saudi Arabia regarding the cases of Sheikh Mastan alias Mohammed Salim and

Hamza Abu Bakir. However, the SR remains concerned that they have been sentenced to death without having been assisted by legal counsel.

Urgent appeal dated 20 November 2007

I would like to draw the attention of your Government to information I have received regarding two persons, Sheikh Mastan alias Mohammed Salim and Hamza Abu Bakir who have reportedly been sentenced to death and are at imminent risk of execution.

According to the information received:

Sheikh Mastan, alias Mohammed Salim and Hamza Abu Bakir, two Indian nationals, currently detained in al-Dammam Prison, were arrested in January 2004 on charges of drug possession. In June 2006, they were convicted and sentenced to death by a court in al-Dammam. However, it is reported that they were not legally represented and that their conviction and sentence have been upheld on appeal and their execution may be imminent.

While I do not wish to prejudge the accuracy of the allegations regarding this specific case, it is my view that the death penalty as applied in this case does not fall within the category of the “most serious crimes” for which international law countenances its possible application. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984). In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee (HRC) has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I observed in my last report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

Moreover, I respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants “a fair and public hearing before an independent and impartial tribunal” (Article 10 of the Universal Declaration on Human Rights) allows no derogation. A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, I would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Principle 6 is particularly pertinent to the present case: “Any such persons [charged with a criminal offence] who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.”

On this basis, I urge your Excellency's Government to expeditiously set aside the death sentence imposed on Sheikh Mastan and Hamza Abu Bakir and provide them with effective legal counsel in view of a renewed trial, free of charge if they lack means of their own.

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

1. Are the facts alleged above accurate? If not, please provide information and documents proving their inaccuracy.
2. If the above facts are accurate, please provide details of any further developments in this case.

Given the urgency of the matter, I would appreciate an expeditious response on the initial steps taken by your Excellency's Government to safeguard the rights of Sheikh Mastan and Hamza Abu Bakir.

Response from the Government of Saudi Arabia dated 20 February 2008

In this regard, the competent authorities in the Kingdom of Saudi Arabia have indicated that the case involving the two above-mentioned persons was referred by the Public Investigation and Prosecution Department to the General Court in Danunam and registered by that Court under No. 3311/25 on 24/2/1425 AH, corresponding to 14 April 2004.

Hamza Abu Bakir was arrested at King Fahd Airport in Dammam when he arrived from India carrying a fake passport. Customs officers searched his suitcase, which was found to contain two packets of a brownish powder weighing 2.4 kg. The chemical laboratory report No. 2571 K.SH positively identified the sample as being the narcotic heroin. He stated that he had received it from a person in India who had requested him to deliver it to Sheikh Mastan in Riyadh, to whom it was actually delivered. When Mastan's office was searched, it was found to contain various narcotic substances weighing a total of 241.5 grams, as well as 12,411 headache-treatment tables which are usually added to the heroin substance to increase its weight. The case, which was heard in the presence of sworn interpreters, ended with the conviction of the first defendant (Hamza Abu Bakir) on the charge of smuggling the narcotic heroin and the conviction of the second defendant (Sheikh Mastan) on the charge of receiving heroin. They were both sentenced to the discretionary penalty of death. Their sentences, after being subjected to a thorough review in accordance with due process of law and the statutory judicial procedures, were upheld by both the Court of Cassation and the Supreme Council of the Judiciary, after which the case file was referred to the competent authority.

Singapore: Death Sentences of Iwuchukwu Amara Tochi and Okele Nelson Malachy

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: Allegation rejected without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur notes the legal interpretations asserted by the Government of Singapore and appreciates the information provided.

Urgent appeal dated 21 January 2007

I would like to draw the attention of Your Excellency's Government to the cases of Mr. **Iwuchukwu Amara Tochi**, a Nigerian citizen, and Mr. **Okele Nelson Malachy**, a South African citizen. Mr Tochi was reportedly arrested on 27 November 2004 after his bag was found to contain 100 capsules of diamorphine (heroin). According to the information received:

Mr Torchi was convicted at trial of importing more than 15 grammes of diamorphine (heroin) into Singapore and given the death sentence, which is mandatory for that offence. On 16 March 2006, the Court of Appeal upheld his conviction. His clemency appeal has reportedly been rejected by the President. During his trial and appeal, the principal issue was whether he had the requisite knowledge that the capsules he was carrying contained diamorphine. Under Singapore law such knowledge may be presumed, subject to rebuttal, under Section 18 of the Misuse of Drugs Act:

Any person who is proved to have had in his possession or custody or under his control . . . anything containing a controlled drug . . . shall, until the contrary is proved, be presumed to have had that drug in his possession. . . . Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

The trial judge appears to have accepted that Mr Tochi might not have realized that the capsules he was carrying contained diamorphine (heroin). The judgment of the trial court stated:

There was no direct evidence that he knew the capsules contained diamorphine. There was nothing to suggest that Smith had told him they contained diamorphine, or that he had found that out on his own. . . . [E]ven if he may not have actual knowledge that he was carrying diamorphine, his ignorance did not exculpate him because it is well established that ignorance is a defence only when there is no reason for suspicion and no right and opportunity of examination. ([2005] SGHC 233)

The appeal court rejected the trial court's conclusion that actual knowledge was legally immaterial, holding that a failure to inspect was only a basis for

upholding the presumption of knowledge. Despite the appeal court's insistence that actual knowledge was an element of the crime with which Mr Tochi had been convicted, it nevertheless upheld the trial court's conviction. The appeal court reasoned:

Rebutting the statutory presumption is a matter of fact, and is no different from any other fact-finding exercise save that the law requires that a person rebutting a statutory presumption does so on a balance of probabilities. It is not sufficient for him merely to raise a reasonable doubt. . . . It was sufficiently clear to us, from the trial judge's grounds of decision, that the court did not believe the explanation of [Tochi], and was thus not persuaded that he had rebutted the statutory presumption. ([2006] 2 SLR 503)

With respect to Mr Malachy, the trial court found that "beyond a reasonable doubt . . . there was an arrangement between Smith and [Tochi and Malachy] for [Malachy] to come to Singapore to collect the capsules from [Tochi]". Mr Malachy was convicted of having abetted Mr Tochi's offence and was also sentenced to death. It is my understanding that no date has been set for the execution of Mr Malachy but that Mr Tochi is scheduled to be executed by hanging on 26 January 2007.

I recall the extensive prior correspondence on the subject of the mandatory death penalty between myself and the Your Excellency's Government. I am aware of the view of the Government that "the death penalty is primarily a criminal justice issue, and therefore is a question for the sovereign jurisdiction of each country". However, the organs of the United Nations concerned with human rights, including the General Assembly, the Economic and Social Council, and the Human Rights Council (together with its predecessor body), have insisted that respect for those safeguards required to protect the human rights of persons facing the death penalty is indeed a matter of international concern. (See, e.g., GA Res. 61/173 (2006), para. 4.) In particular, it has long been understood that, as the first Special Rapporteur on extrajudicial, summary or arbitrary executions stated in 1985, the Safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the Economic and Social Council would "serve as criteria for ascertaining whether an execution is of a summary or arbitrary nature" (E/CN.4/1985/17, para. 24).

With that in mind, there are three key issues that I wish to bring to the attention of Your Excellency's Government.

The limitation of the death penalty to the "most serious crimes". Pursuant to the Safeguards, "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences." I would note that an individual cannot plausibly be considered to have committed an intentional crime if he was unaware even of the facts constituting that crime. I would also note that even successful drug trafficking has consistently been held by the Human Rights Committee, as well as by the Special Rapporteur, to fall short of the "most serious crimes" threshold. (See, e.g, A/50/40 (1995), para. 35 [HRC]; A/55/40 (2000), para. 13 [HRC]; A/51/457 (1996), para. 107 [SR].) Under international human rights law, the crimes for which Mr Tochi and Mr

Malachy were convicted, while serious, cannot be considered among the “most serious crimes” for which the death penalty may be imposed.

The prohibition of the mandatory death penalty. Laws imposing mandatory death sentences, such as the Misuse of Drugs Act, have been shown to unavoidably violate human rights law. The categorical distinctions that may be drawn between offences in legislation are not sufficient to reflect the full range of factors relevant to determining whether a death sentence would be permissible in a capital case. Respect for the human rights to life and to freedom from cruel, inhuman or degrading punishment recognized in the Universal Declaration of Human Rights is impossible to ensure without permitting the judiciary to evaluate whether the death penalty would be permissible in each particular case. In this regard, I find the conclusions of the Indian Supreme Court particularly persuasive. While that court’s analysis pertains to the provisions of the Constitution of India, it is no less relevant to our understanding of the provisions of international human rights law:

It has to be remembered that the measure of punishment for an offence is not afforded by the label which that offence bears, as for example ‘Theft’, ‘Breach of Trust’ or ‘Murder’. The gravity of the offence furnishes the guideline for punishment and one cannot determine how grave the offence is without having regard to the circumstances in which it was committed, its motivation and its repercussions. The legislature cannot make relevant circumstances irrelevant, deprive courts of their legitimate jurisdiction to exercise their discretion not to impose the death sentence in appropriate cases, compel them to shut their eyes to mitigating circumstances and inflict upon them the dubious and unconscionable duty of imposing a preordained sentence of death. . . . A standardized mandatory sentence, and that too in the form of a sentence of death, fails to take into account the facts and circumstances of each particular case. It is those facts and circumstances which constitute a safe guideline for determining the question of sentence in each individual case. The infinite variety of cases and facets to each would make general standards either meaningless ‘boiler plate’ or a statement of the obvious. . . . The task performed by the legislature while enacting [mandatory death penalty legislation] is beyond even the present human ability. . . . (Mithu v. State of Punjab, 2 S.C.R. 690, 704, 707–708 (1983) (internal citations and quotation marks omitted).)

As I have noted in earlier correspondence, similar conclusions have been reached by numerous human rights bodies, including the UN Human Rights Committee, the Inter-American Commission and Court of Human Rights, and the Judicial Committee of the Privy Council. In addition, I might note that the Commission on Human Rights has “urge[d] all States that still maintain the death penalty . . . [t]o ensure . . . that the death penalty is not imposed . . . as a mandatory sentence.” (CHR Res. 2005/59, para. 7(f).) Ultimately, it is impossible to avoid the conclusion of the Supreme Court of India that “law ceases to have respect and relevance when it compels the dispensers of justice to deliver blind verdicts by decreeing that no matter what the circumstances of the crime, the criminal shall be hanged by the neck until he is dead.” (Mithu v. State of Punjab, 2 S.C.R. 690, 704 (1983).)

The presumption of innocence. Article 11 of the Universal Declaration of Human Rights recognizes as a fundamental human right that, “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” According to the Safeguards guaranteeing protection of the rights of those facing the death penalty, “Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.” In the present case, the trial court convicted Mr Tochi and Mr Malachy and sentenced them to death despite finding that there was room for an alternative explanation of the facts. The appeals court accepted the factual findings of the trial court, but upheld the convictions and sentences by shifting the burden of proof to the defendants.

In light of this review of basic human rights norms recognized by the international community, I would respectfully request Your Excellency’s Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law.

Response from the Government of Singapore dated 7 March 2007

The Singapore Government does not consider the question of the death penalty in Singapore, and the case of Mr Iwuchukwu Amara Tochi and Mr Okele Nelson Malachy specifically, as falling within the ambit of the office of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Mr Tochi and Mr Malachy were convicted and sentenced in a court of law where due process and safeguards were followed. They had access to and were represented by legal counsel throughout the legal proceedings.

The integrity and transparency of Singapore's legal system is well-known. All persons before the law are ensured of the safeguards enshrined under the Constitution and due process of the law. This standard is upheld in all cases before the Singapore Courts, as it was in the case involving Mr Tochi and Mr Malachy. All judicial decisions and appeals involving capital cases are written and open to public scrutiny.

Singapore fully subscribes to the principle that it is a fundamental human right to be presumed innocent until proven guilty. Mr Tochi and Mr Malachy were found guilty by a competent court of law only after it had considered the totality of the evidence before it.

In the present case, Mr Tochi was convicted and sentenced only after the High Court had concluded that the Prosecution had proved its case against him beyond a reasonable doubt. It was not disputed that Mr Tochi was in possession of the bag containing the capsules of diamorphine. His defence was that he did not know that the capsules contained diamorphine. Under the law, Mr Tochi needed only to show on a balance of probabilities (not beyond reasonable doubt) that he did not know he was carrying drugs. After carefully considering all the evidence, the trial judge did not believe Mr Tochi. The trial judge found that Mr Tochi's evidence was full of contradictions, and that Mr Tochi had wilfully turned a blind eye to the contents of the capsules because he was tempted by the money which had been offered to him. On

appeal, the Court of Appeal upheld the decision of the trial judge and concluded that the Prosecution had proved its case against Mr Tochi beyond a reasonable doubt.

Your assertion in paragraph 9 that Singapore's laws making the death penalty mandatory for drug trafficking are inconsistent with international human rights standards is not correct. There is no international consensus for or against capital punishment imposed according to due process of the law. Key international instruments that apply to countries with wide divergence in cultures and values do not proscribe the use of the death penalty in their texts. The issue of capital punishment is a question that every State has the sovereign right, under international law, to decide, taking into account its own circumstances.

Similarly, there is neither international consensus nor customary international law on what constitutes the most serious crimes for which the sentence of death may be imposed. Your assertion that "the crimes for which Mr Tochi and Mr Malachy were convicted, while serious, cannot be considered among the "most serious crimes" for which the death penalty may be imposed" reflects your personal views rather than accepted international human rights law.

The Singapore Government recognises that the death penalty is a severe penalty. Capital punishment is imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. The Singapore Government considers drug trafficking to be one of the most serious offenses which warrants the imposition of the death penalty. As a small country located near the Golden Triangle, Singapore is particularly vulnerable to the threat of drug trafficking. As such, the Singapore Government has taken a firm and consistent stand against drug offenses, whether they involve Singaporeans or foreigners. The death penalty plays a key role in deterring organised drug syndicates from conducting their criminal activities in or through Singapore, and keeps the local drug situation under control. The Singapore Government has a responsibility to protect the interests and welfare of Singaporeans and those living in Singapore, and cannot allow the actions of an individual or a few individuals to harm the larger interests of society.

Capital punishment cases in Singapore are conducted with due process and judicial safeguards. Your continued attempts to link the death penalty cases in Singapore with extrajudicial, summary and arbitrary executions reveal your personal biases against the death penalty. It is regrettable that the credibility and objectivity of the office of the Special Rapporteur is being undermined by personal agendas, and in the process detracting attention from the intended mandate of the office for extrajudicial, summary and arbitrary executions.

Singapore: Death sentences of Tan Chor Jin, Hamir Hasim, Kamal Kupli and Abdul Malik

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 4 males

Character of reply: Allegation rejected but without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur notes the legal interpretations asserted by the Government of Singapore and appreciates the information provided.

Urgent appeal dated 29 February 2008

I would like to draw the attention of Your Excellency's Government to two cases. One concerning Tan Chor Jin and the other concerning Hamir Hasim, Kamal Kupli and Abdul Malik:

According to the information I have received:

Mr. Tan Chor Jin, was found guilty of the murder of a man who allegedly owed him money. He was sentenced to death, which is mandatory for that offence, on 22 May 2007. On 30 January 2008, his final appeal against his sentence was rejected by the High Court.

Mr. Hamir Hasim, Mr. Kamal Kupli and Mr. Abdul Malik, all Malaysian nationals, are at risk of imminent execution. On 1 March 2007, they were convicted for the murder of a man they robbed in December 2005, and sentenced to death, which is mandatory for that offence. On 18 February 2008, their final appeal was rejected by the Court of Appeals.

I recall the extensive prior correspondence on the subject of the mandatory death penalty between myself and the Your Excellency's Government. I am aware of the view of the Government that "the death penalty is primarily a criminal justice issue, and therefore is a question for the sovereign jurisdiction of each country". Criminal justice issues do, however, fall squarely within the domain of international human rights law and are in no way immune from its requirements. Moreover, the organs of the United Nations concerned with human rights, including the General Assembly, the Economic and Social Council, and the Human Rights Council (together with its predecessor body), have insisted that respect for those safeguards required to protect the human rights of persons facing the death penalty is indeed a matter of international concern. (See, e.g., GA Res. 61/173 (2006), para. 4.) In particular, it has long been understood that, as the first Special Rapporteur on extrajudicial, summary or arbitrary executions stated in 1985, the Safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the Economic and Social Council would "serve as criteria for ascertaining whether an execution is of a summary or arbitrary nature" (E/CN.4/1985/17, para. 24).

In this regard I further wish to bring to the attention of Your Excellency's Government the consistent finding by international expert bodies that laws imposing mandatory death sentences, such as the Penal Code, unavoidably violate human rights law. The distinctions that may be drawn between offences in legislation are not sufficient to reflect the full range of factors relevant to determining whether a death sentence would be permissible in a capital case. Respect for the human rights to life and to freedom from cruel, inhuman or degrading punishment recognized in the Universal Declaration of Human Rights is impossible to ensure without permitting the

judiciary to evaluate whether the death penalty would be permissible in each particular case. In this regard, I find the conclusions of the Indian Supreme Court particularly persuasive. While that court's analysis pertains to the provisions of the Constitution of India, it is no less relevant to our understanding of the provisions of international human rights law:

It has to be remembered that the measure of punishment for an offence is not afforded by the label which that offence bears, as for example 'Theft', 'Breach of Trust' or 'Murder'. The gravity of the offence furnishes the guideline for punishment and one cannot determine how grave the offence is without having regard to the circumstances in which it was committed, its motivation and its repercussions. The legislature cannot make relevant circumstances irrelevant, deprive courts of their legitimate jurisdiction to exercise their discretion not to impose the death sentence in appropriate cases, compel them to shut their eyes to mitigating circumstances and inflict upon them the dubious and unconscionable duty of imposing a preordained sentence of death. . . . A standardized mandatory sentence, and that too in the form of a sentence of death, fails to take into account the facts and circumstances of each particular case. It is those facts and circumstances which constitute a safe guideline for determining the question of sentence in each individual case. The infinite variety of cases and facets to each would make general standards either meaningless 'boiler plate' or a statement of the obvious. . . . The task performed by the legislature while enacting [mandatory death penalty legislation] is beyond even the present human ability. . . . (Mithu v. State of Punjab, 2 S.C.R. 690, 704, 707–708 (1983) (internal citations and quotation marks omitted).)

As I have noted in earlier correspondence and in my latest report to the Human Rights Council (A/HRC/4/20), similar conclusions have been reached by numerous human rights bodies, including the UN Human Rights Committee, the Inter-American Commission and Court of Human Rights, and the Judicial Committee of the Privy Council. In addition, I might note that the Commission on Human Rights has "urge[d] all States that still maintain the death penalty . . . [t]o ensure . . . that the death penalty is not imposed . . . as a mandatory sentence." (CHR Res. 2005/59, para. 7(f).) Ultimately, as noted by the Supreme Court of India, "law ceases to have respect and relevance when it compels the dispensers of justice to deliver blind verdicts by decreeing that no matter what the circumstances of the crime, the criminal shall be hanged by the neck until he is dead." (Mithu v. State of Punjab, 2 S.C.R. 690, 704 (1983).)

In light of this review of basic human rights norms recognized by the international community, I would respectfully request Your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law.

Response from the Government of Singapore dated 9 April 2008

The death penalty in Singapore is provided for as part of the judicial process. Its imposition is neither summary nor arbitrary. It thus does not fall within the mandate of the office of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Mr Tan Chor Jin, Mr Hamir Hasim, Mr Kamal Kupli and Mr Abdul Mali were convicted and sentenced in a court of law where due process and safeguards

were fully complied with. They were represented by legal counsel during the proceedings save for Mr Tan who was offered legal representation by the state but chose to represent himself at the trial.

Singapore recognises that the death penalty is a severe penalty and should only be imposed for the most serious crimes in accordance with the law in force at the time of the commission of the crime. There is no question that murder and firearms offences are regarded by every country as some of the most serious offences under their domestic penal laws. The Singapore Government considers that the gravity of the crimes of murder and the use of arms (which Mr Tan was convicted of) warrants the imposition of the mandatory death penalty.

Singapore agrees that criminal justice matters are not "immune" from the requirements of international human rights law. International human rights law does not, however, prohibit making the death penalty mandatory. There is no consensus for or against capital punishment, including mandatory capital punishment, imposed according to the due process of the law. Key international instruments that apply to countries with a wide divergence in cultures and values do not proscribe the use of the death penalty in their texts.

Mandatory sentences are provided for only after careful consideration based on factors such as the seriousness of the offense. They are also reviewed on a periodic basis.

Singapore's laws which provide for tough mandatory penalties, for example, for drugs and firearms offenses, are well known not only in Singapore but also internationally. As a result of our tough stand against murder and the illegal possession and use of firearms, the murder rate in Singapore is low and the incidence of the use of firearms in Singapore by criminal elements, including triads and gangs, is very rare. Our tough stand against crime in general has made Singapore one of the safest places in the world to work and live in. The Singapore Government has a responsibility to protect the interests and welfare of Singaporeans and those living in Singapore, and cannot allow the actions of an individual or a few individuals to harm the larger interests of society.

It bears reaffirming that all capital cases in Singapore are conducted with due process and judicial safeguards. All capital cases in Singapore are heard by our High Court, and the sentences meted out in accordance with the laws passed by the Singapore Parliament that is freely elected by its people. Your mandate is confined to extrajudicial, summary or arbitrary executions. Whether or not a death sentence should be mandatory in our view lies outside your mandate. By raising the question, you have clearly exceeded the authority of your office.

Somalia: Death Sentences of Abdulayhi Dahir Muse Afweyne and Mohammed Abdi Wardheere

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 13 July 2007 sent with the Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia

We are writing regarding the reported execution of Abdulayhi Dahir Muse Afweyne and Mohammed Abdi Wardheere on 5 July, 2007 who were convicted of murder. It is my understanding that:

The above two may have been convicted by a military court of the killing of Osman Ali, the deputy district commissioner of Mogadishu's Horuwa district which occurred on 2 July, 2007. The executions of the two above persons at the police school in Mogadishu apparently occurred before a large crowd. According to the reports I have received these two executions would be the first meted out by a court of the Transitional Federal Institutions since they embarked on regaining authority over Somalia and rebuilding State institutions with assistance from the United Nations and others.

While we do not wish to prejudge the accuracy of these allegations, we respectfully remind your Excellency that “in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (International Covenant on Civil and Political Rights) (“ICCPR”) admits of no exception” (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). We note that Somalia is a State Party to the ICCPR and that these guarantees include the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. We do not have any detailed accounts of the procedures followed in relation to the trials of the two individuals but note that the Transitional Federal Charter contains provisions in its articles 17 and 57 that are broadly in line with international standards.

Relevant to the cases at issue, the right to a fair trial further includes the guarantee of “adequate time and facilities for the preparation of [one’s] defence and to communicate with counsel” (Article 14(3) (b) ICCPR) to which Somalia is a State Party. In particular we are concerned that the reported period of three days from the date of the commission of the offence to the time of execution appears to have been in violation of the above provision.

It is our understanding that the executed men in this case were not afforded the right to have their death sentences reviewed by a higher tribunal according to law, in violation of article 14(5) ICCPR to which Somalia is a State Party.

Similarly the executions as carried out in these cases may have been in violation of common article 3 to the Geneva Conventions which prohibits “the passing of sentences

and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples”.

We would like to recall the principle whereby all States have “the obligation (...) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, as recently reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4). The State obligation to conduct independent and impartial investigations into possible violations does not lapse in situations of armed conflict, as in Somalia. As noted in a previous report to the Council, whilst the modalities of this obligation in situations of armed conflict have not been fully settled, some points are clear:

"While human rights law does not dictate any particular institutional arrangement for the administration of justice, neither does it permit exceptions to its requirements. . . . As an empirical matter, subjecting allegations of human rights abuse to military jurisdiction often leads to impunity. In such situations, investigation and prosecution by bodies independent of the military is necessary." (E/CN.4/2006/53, para. 37).

In light of this review of basic human rights norms recognized by the international community, I would respectfully request Your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. Whilst we recognize the current serious security challenges facing Somalia, the rule of law must be upheld and human rights safeguards respected as required under domestic, regional and international law.

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

1. Is the information above regarding the execution of the two men accurate?
2. Please provide details of all court proceedings pertaining to these two individuals, if any, whether before civil or military courts
3. Please provide the details of any investigation conducted by the authorities into the execution of the above two men.

Somalia: Killing of Civilians in Mogadishu

Violation alleged: Violations of the right to life during armed conflict; Deaths due to attacks or killings by security forces

Subject(s) of appeal: Unknown number of civilians

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 21 September 2007

I would like to bring to the attention of your Excellency's Government reports I have received regarding incidents of the killing of civilians in Mogadishu between 29 March – 1 April, and 18 April – 26 April 2007. I have also written to the Government of Ethiopia regarding related allegations.

According to the information received:

Ethiopian forces, with the consent of your Excellency's Government, were stationed in Mogadishu to reduce and prevent insurgent attacks, and with the aim of ensuring the Transitional Federal Government (TFG) of Somalia's control of the capital. However, it is alleged that in seeking to do so, the Ethiopian forces indiscriminately and disproportionately deployed mortar, rocket, and artillery attacks against insurgent forces into civilian neighbourhoods. Insurgents often used mobile tactics by launching mortars at Ethiopian and TFG bases from a civilian populated area, and then leaving the area. It is alleged that Ethiopian counter-attacks and offensives against insurgents generally struck the civilian areas from which insurgent attacks were launched, but that Ethiopian forces failed to take feasible precautions to avoid or minimize civilian casualties, failed to verify that targets were military objectives, and failed to discriminate between military and civilian objectives. The evidence provided for these allegations is that the Ethiopian forces engaged in the following means and methods of warfare: area bombardments of civilian areas (using weapons such as BM-21 multiple barrel rocket launchers); firing mortars indiscriminately (by failing to systematically use spotters or guidance systems when firing from distances of over two kilometres) into populated civilian areas; and firing rockets into civilian neighbourhoods in systematic patterns at regular intervals (evidencing a lack of military targeting). According to allegations received, these attacks occurred between 29 March and 1 April 2007 (in the Somali neighbourhoods of Bar Ubah, Al-Baraka, Shirkole, Towfiq, Hamar Bile, Suq Ba'ad, and Hamar Jadid), and between 18 April and 26 April 2007 (in the Somali neighbourhoods of Towfiq, Hamar Jadid, Bar Ubah, Hararyale, Suq Ba'ad, Jamhuriya, and Huriwa). The attacks are alleged to have resulted in the deaths of between approximately 700 and 1300 Somali civilians.

We have also received allegations that some civilian areas may have been intentionally targeted by Ethiopian forces. Allegations received suggest that while most attacks were directed against neighbourhoods used by insurgents to launch attacks, some neighbourhoods without any insurgent presence were also hit.

With regards to the role of your Government in these attacks conducted primarily by Ethiopian forces, it is alleged that four factors indicate that your Government was aware of, appears to have consented to, assisted with, encouraged or requested the bombardment of civilian areas in the manner detailed above. First, it is alleged that TGF forces militarily supported the Ethiopian forces during the March and April offensives. Second, your Government made public statements warning civilians in specific neighborhoods of impending attacks, thereby indicating your fore-knowledge of attacks on populated civilian areas. Third, the warnings to civilians are alleged to have been grossly inadequate, consisting of only a small number of statements made on radio by Government officials, and directed at areas inhabited by tens of thousands of residents all expected to vacate simultaneously within a few hours notice. There were no Government attempts to systematically inform civilians to leave certain locations, no guidance offered for civilians to follow when ordered to vacate, and apparently no measures were taken to ensure that areas were in fact vacated before bombardments began. It is also alleged that in some areas, warnings came after bombardments had already begun. Fourth, that President Abdullahi Yusuf stated on public radio (Voice of America Somali Service, 21 March 2007) that your Government would “bombard [any place from which a bullet is fired by insurgents] regardless of whoever is there”, and that he replied “Yes we will bombard it!” in response to the question: “Even if civilians are there you are going to bombard it?”.

In addition, I have received allegations that Ethiopian troops summarily executed identifiable Somali civilians on your Government’s territory. The following specific allegations have been brought to my attention:

1. On 29 March 2007, it is alleged that an Ethiopian soldier intentionally shot and killed a civilian woman. The woman, approximately 50 years old and identified as “Noura”, was allegedly shot with a machine gun, and died immediately in the Charcoal Market in Towfiq while hiding behind a lorry.
2. On 19 June 2007, it is alleged that when an Ethiopian military convoy was hit by a roadside bomb near Jaalle Siyad College, the soldiers fired on a civilian minibus at the Industrial Road at approximately 3 p.m., killing an unidentified passenger.
3. On 19 June 2007, the soldiers from the attacked convoy are further alleged to have raided a civilian house in the Damanyo neighborhood, and at approximately 4.30 p.m. to have intentionally shot and killed three brothers named Abdulkadir Ibrahim Diriye, Sharmarke Ibrahim Diriye, and 17 year old Jama Ibrahim Diriye; and a fourth man, 19 year old Abdi Abdullahi Abdulle. The men were found by relatives shortly after the shootings, each body evidencing multiple bullet wounds. Abdi Abdullahi Abdulle was found dead with his hands tied behind his back.

While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency’s Government to the fundamental legal rules applicable to all non-international armed conflicts under international humanitarian law and human rights

law. Under international humanitarian law, the conflict in Somalia is a non-international armed conflict because, despite the involvement of two states, your country consented to the intervention of Ethiopia. Pursuant to its obligations under the Geneva Conventions and customary international law, your Government is required in an armed conflict to respect – and to ensure respect for – the rules of international humanitarian law.

Specifically, your Government is under an obligation to distinguish between combatants and civilians and to direct attacks only against combatants (Rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”). Indiscriminate attacks are prohibited (Rule 11 of the Customary Rules). Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, or village are prohibited (Rule 13 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). All feasible precautions must be taken to avoid and minimize incidental loss of civilian life (Rule 15 of the Customary Rules). This explicitly requires that parties to a conflict must give effective advance warning of attacks which may affect the civilian population (Rule 20 of the Customary Rules). Further, your Government is under an obligation to not encourage persons or groups engaged in the conflict in Somalia to act in violation of international humanitarian law, which includes an obligation not to encourage the indiscriminate bombing of civilian areas.

I would like to bring to your Government’s attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life, a right enshrined in humanitarian and human rights law. In relation to the allegations of intentional targeting of civilian areas and of allegations that Ethiopian forces summarily executed civilians, I would further like to bring to your attention that intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities is a war crime (Article 8(2)(e)(i) of the Rome Statute of the International Criminal Court). Your Government has a specific obligation to investigate war crimes allegedly committed by your nationals or armed forces, or on your territory, and, if appropriate, to prosecute the suspects (Rule 158 of the Customary Rules).

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

1. Are the facts alleged in the above summary accurate? Please refer to the results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incidents.
2. Please provide the details of any disciplinary measures imposed on or criminal prosecutions against members of the armed forces of the TGF or of Ethiopia

responsible for the alleged incidents. Please specifically indicate whether any forces were or will be charged with war crimes.

3. With respect to the allegations of your Government's role in Ethiopian attacks on civilian areas, did your Government assist and/or encourage Ethiopian forces to carry out indiscriminate attacks on civilian neighborhoods?

4. If not, what measures were taken by your Government to ensure that Ethiopian and/or TGF forces complied with international law while carrying out military attacks on your territory? Specifically, what precautions, if any, were taken to ensure that effective advance warnings of attacks were given to civilians? What safeguards, if any, were then employed to verify that only legitimate military targets were attacked? What methods were adopted to distinguish between military and civilian objects? What precautions were taken in the launching of attacks to minimize loss of civilian life? What means and methods of warfare were adopted to avoid incidental loss of civilian life, and to ensure that incidental loss of life was not excessive in relation to the anticipated military advantage?

5. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

Sri Lanka: Killings of Journalists and Media Workers

Violation alleged: Impunity

Subject(s) of appeal: 11 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Sri Lanka and looks forward to receiving information on any prosecutions that take place.

Allegation letter dated 23 August 2007 sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

We would like to bring to your Government's attention information we have received concerning reported killings of eleven journalists and media workers in Sri Lanka since January 2006. All those killed either worked on Tamil language publications or reported violations relating to the conflict. Many of the killings appear to share common elements: the shootings occurred in Government controlled areas and sometimes during curfew hours. Furthermore, investigations into most of the killings have reportedly been inconclusive and the perpetrators have not been found.

According to information we have received:

Mr **Thanikasalam Sarirooban**, a journalist with the Daily Mirror newspaper, was shot dead on 2 August 2007. It was reported that he was returning home in Jaffna and was shot by two gunmen on a motorcycle.

According to information received, Mr Sahathevan Nilakshan, a student of journalism and one of the editors of a magazine Chaa'laram was shot dead at his house at Kokuvil, 3km from Jaffna on 1 August, 2007. Mr Nilakshan was reportedly shot dead by two gunmen who entered his home during the early morning before the end of a night time curfew. It is reported that Chaa'laram is a publication linked to the Federation of Jaffna District students which is known for supporting Tamil nationalism. It was also reported that death threats were made in May 2007 against students selling Chaa'laram at Jaffna University.

According to information we have received, Mr Selvaraja Rajivaram a journalist working for the Tamil language Uthayan (Dawn) newspaper in Jaffna was shot dead on 29 April 2007 in Jaffna. Mr Rajivaram reported on human rights issues in the Jaffna peninsula and had earlier written for the Namathu Ealanadu.

According to information received, Mr Subash Chandraboas, editor of the magazine Nilam was shot dead on the evening of 16 April 2007 at his home in Thirunavatkulam, near Vuvuniya. Mr Chandraboas was reportedly also wrote for the Colombo-based magazine Aravali and the London-based Tamil World.

On 20 August 2006, Mr Sinnathamby Sivamaharajah, the managing director of Namathu Eelanadu, a Tamil-language newspaper, in Jaffna, was shot dead at Vellippalai. Mr Sivamaharajah was a former Member of Parliament for the Tamil United Liberation Front, and a member of the Tamil National Alliance. The shooting reportedly occurred at night time within an area controlled by the Sri Lankan army and during a curfew.

On 16 August 2006, Mr Sathasivam Baskaran a delivery man for the Jaffna based Uthayan newspaper was reportedly shot dead whilst in his Uthayan delivery van in an area controlled by the Sri Lankan armed forces, during a temporary lifting of the curfew.

On 1 August 2006, Mr Mariathas Manojanraj was reportedly killed by a mine as he was travelling to Jaffna on 27 July, 2006 to collect newspapers for distribution. Mr Manojanraj's death reportedly occurred at a time that death threats were being made against distributors of Tamil-language newspapers.

In July 2006, the independent Sinhala journalist Mr Sampath Lakmal de Silva was found dead in Colombo. He was working as a freelancer after covering the conflict between the government and the Tamil separatists for the newspaper Sathdina. It was reported that he was abducted during the night of 1 to 2 July in Borallasgamuwa, Colombo and that his body was found the next morning. He was reportedly the first Sinhala journalist to be killed in eight years.

On 2 May 2006, it was reported that two employees of the Tamil-language daily Uthayan were shot dead. According to information received, gunmen burst into the newspaper's offices and demanded to see the editor and on learning of his absence, they opened fire and shot Mr Suresh Kumar, the newspaper's marketing manager, and Mr Ranjith Kumar, another employee. Two other people reportedly sustained bullet wounds. The day before the killings, the newspaper had published a cartoon of Douglas Devananda of the Eelam People's Democratic Party (EPDP).

On 24 January 2006, Mr Subramaniam Sugirdharajan, correspondent for the Tamil daily Sudar Oli in Trincomalee, was found dead a day after writing an article about alleged excesses committed by pro-government paramilitary forces in his region. He was reportedly shot early in the morning as he was waiting for public transport to go to work.

According to the information received most of the investigations into these killings have been inconclusive and the perpetrators have not been found.

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency's Government to take effective measures against what appears to be a consistent pattern of failure to investigate effectively, to prosecute and to take measures designed to prevent further assassinations of journalists.

In this respect, we would like to recall that, as reiterated in Commission on Human Rights resolution 2004/37 on "Extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation ... to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". This obligation, affirmed also in the jurisprudence of the Human Rights Committee (see the Committee's views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 6 of the International Covenant on Civil and Political Rights to which Sri Lanka is a State Party.

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

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

1. Are the facts alleged in the summary of the cases accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, or other inquiries which may have been carried out in relation to these cases. If no inquiries have taken place or if they have been inconclusive please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether witnesses to these attacks have been afforded with adequate security and witness protection.
5. Please indicate whether compensation has been provided to the victims and the families of the victims.

Response from the Government of Sri Lanka dated 23 October 2007

1. Mr. Thanikasalam Sairooban

According to our appropriate authorities no murder of a person by the above name has been reported on or about August 2nd 2007 in Jaffna District.

The News Editor of "Daily Mirror" news paper Mr. Eeswaran confirmed that there was no journalist or a media worker by the name of Thanikasalam Sairooban.

2. Mr. Sabadevan Nilakshan

On 1st August 2007 one Rajaratnam Sabadevan of No. 47, Railway Station Road, Kokuvil, Jaffna, had complained at Jaffna police station that his son Sabadevan Nilakshan who was an undergraduate at the Jaffna University was shot dead by an unknown gunman at about 5.30 in the morning.

On receipt of this complaint officers of Jaffna Police visited the scene and conducted investigations having questioned the people in the vicinity but could not trace any person who had witnessed this murder. All required norms of investigations have been followed by the officers of Jaffna Police under the supervision of Senior Superintendent of Police Jaffna Division.

There was no report of death threats received by the deceased as mentioned in the report of the Special Rapporteur.

Facts of this case have been reported in the Magistrate Court of Jaffna under case no.B 272/07 and inquiries are being continued to trace the responsible suspects.

5. Mr. Sinnathamby Sivarnaharajah

On 21st August 2006 one Periyathambi Naguleshwari complained at Tellippalai Police Station that per brother Sinnathamby Sivarnaharajah had fallen in his locked room and he is motionless.

On receipt of this complaint officers of Tellippalai broke open the front and the bed room doors of the residence and found Mr.Sinnathamby Sivarnaharajah dead with injuries similar to gun shots.

Officers of Tellippalai Police conducted investigations under the directions of the Magistrate of Jaffna and Senior Superintendent of Jaffna Division.

The post mortem examination was held by the Jurisdiction Medical Officer of Jaffna and the cause of death was given as due to two gun shot injuries.

Mr. Sinnathamby Sivarnaharajah was former member of Parliament for Jaffna District from "Tamil Arasakattu" political party and was the former President of the Tellippalai Cooperative Society and the "Eelanadu" news paper.

Mr. Sivarnaharajah was a well known and respected social worker amongst the inhabitants of the area including the Security Forces and Police personnel.

On a directive of Inspector General of Police, the Criminal Investigation Department took over the investigations from Tellippalai police and preliminary investigations have revealed that on 20th August 2006 at about 19.30hrs a lone gunman had shot at Mr. Sivamaharajah through a partly opened window of his room.

Mrs. Ranjani Devi, who resides close to the residence of the deceased, had stated that on 20th August 2006 at about 19.30 hrs she saw a reflection of a person running towards the residence of the deceased and due to darkness in the area she could not identify the person.

The Police Personnel manning the police post closest to the residence of the deceased stated that on this particular day around 19:30 hrs they heard two sounds similar to gun shots and asserted their senior officers anticipating an attack from the LTTE.

7. Mr. Mariadas Manoinnrai

On 27th July 2007 one Mariyanayagam Robinson complained at Atchchuvveli police that he and Mr. Mariadas Mancjanraj were riding two motor cycles delivering newspapers and close to Rasa Veediya at around 03.40hrs, Mr.Mariadas who was in front got caught to a mine and died.

On receipt of this complaint officers of Atchchuvveli Police visited the scene, conducted investigations under the directions of Senior Superintendent of Police Jaffna Division. Police recovered six ball bearings from the scene of the crime.

In conformity with forensic examinations the mine has been filled with C4 explosives and ball bearings have been added to cause maximum possible damage. In the recent past LTTE have used identical mines to kill Security Forces and Police personnel in Jaffna Division.

It could be rationally inferred that the mine has been placed to target a Service or a Police vehicle by the LTTE and it may have gone off accidentally.

It is also pertinent to mention that since Security Forces and Police personnel are confined to their barracks in the night, LTTE cadres from demilitarized areas in Atchcuveli infiltrate the Government Control areas and place mines to target SF & Police personnel.

The mine has been positively identified as a mine used by the LTTE.

8. S. Mr. Samrnath Lakmal De Silva

On 2nd July 2007 on receipt of information officers of Dehiwala Police recovered a body with gun shot injuries. Subsequent inquiries led to the identification of the dead body as that of free lance journalist Mr.Sampath Lakmal De Silva.

Officers of Dehiwala Police recovered the below noted items from the scene of the crime:

1. Four empty casings of 9mm munitions
2. 17 mobile telephone cards
3. Identity card issued to Journalists

9 & 10 Mr. Suresh Kumar & Mr. Raniith Kumar

On 02/05/2006 at about 19.45 hrs an unidentified armed gang entered the premises of "Uthayan" newspaper office located at No. 349, Kasthriya Road, Jaffna and opened fire, killing two persons and seriously injuring two others. The gang also caused extensive damage to the property and got away on three motor cycles.

The two dead persons have been identified as W.J. Sagaudes a.k.a Suresh Kumar and R. Ranjith, a.k.a.Ranjith Kumar and A.R.Udayakumar and N. Dayakaran sustained serious injuries.

On the directive of the Inspector General of the Police the CID took over the investigations from Jaffna Police. The CID conducted investigations having questioned eye witnesses, "Uthayan" employees and the military personnel.

Inquiries revealed that at least seven men have been in the gang which entered the premises from the side entrante. Two were armed with T-56 rifles with folded butts, one armed with a pistol and another with a SMG. They have been wearing balaclava and dressed in black coloured trousers and wearing shoes.

The gang had come on three motor cycles and two of the riders had stood guard with their headlights on at a distance of about 40 meters from the press, ready to take off facing the direction of Jaffna Town. Witnesses have heard some of them speaking to each other in fluent Tamil in typical Jaffna Tamil accent and they have also spoken in broken Sinhala on their eve of departure.

The assailants had opened fire at the Military personnel manning the check point near Sivam Kovil on old KKS road when challenged to stop. The army returned fire but the assailants escaped leaving behind a T-56 rifle which had fallen down when they turned the bikes to escape. The weapon was taken into custody by the Army and later handed over to the Police.

This goes to confirm that the assailants had used military type weapons in this operation and had planned it well to avoid any counter attack by the security forces and also to implicate the Army with a view to bring GOSL into disrepute in the eyes of the world community.

11. Mr. Subramaniam Suairdaraian

On 24th January 2006 at around 06.45 hrs Mr. Subramaniam Sugirdarajan was shot dead by a lone gunman as he was walking towards the bus stop.

Officers of Trincomalee Police visited the scene, immediately conducted investigations under the supervision of Senior Superintendent of Police Trincomalee Division.

The following items have been recovered from the scene of the crime: 1. Two spent munitions of 9 mm, 2. A pair of rubber slippers.

The post-mortem examination was held by the Judicial Medical Officer Trincomalee who reported that the death was due to gun shot injuries fired at close range.

Mrs. Suhair Rajan Maheswari, the wife of the deceased stated that her husband was a tele clerk attached to the Trincomalee Port Authority and on the day of the incident soon after her husband left home at around 06.40 hrs she heard the report of two gun fires and later came to know that her husband had been shot dead.

V. Ponnambalam Balasingham of No.14 Lower Road, Oars Flill, Trincomalee stated that on the day of the incident at around 06.50 hrs he heard the report of two gun shots and when he came out of the bouse he saw a person on the road with bleeding injuries.

Although several persons have been questioned in this regard no one was able to give the description of the assailant.

The facts of this case have been reported in the Magistrate Court of Trincomalee under case no.62/2006.

Further inquiries are being continued by Trincomalee Police.

Sri Lanka: Impunity for the Killing of Thirteen Civilians in 2006

Violation alleged: Impunity

Subject(s) of appeal: 13 persons

Character of reply: Receipt acknowledged

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a substantive response concerning the killing of 13 civilians on Kayts on 13 May 2006. The SR would note, however, that the Government has already taken longer than the customary 90 days to respond.

Allegation letter dated 12 September 2007

I would like to bring to your Government's attention information I have received concerning the investigation into the killings of thirteen civilians who are reported to have died in three separate attacks in Kayts an islet off the Jaffna Peninsula on 13 May, 2006. It is my understanding that the investigations into the killings have not been completed and perpetrators have not been found.

According to information:

I have received, eyewitness court testimony at a May 2006 inquest hearing, was given that three men wearing green tee-shirts and shorts of the type worn by the Sri Lankan navy entered the home of Sellathurai Amalathas in the village of Allaipiddy at about 8pm on 13 May 2006 firing their weapons. The assailants shot and killed nine persons and injured two others. Four others were shot and killed later the same evening in the villages of Puliyanakoodal and Vangalady in two separate incidents. At about 10.30 pm the same day it was reported that gunmen entered the home of Murugesu Shanmugalingam in Puliyanakoodal and shot him and two other members of his family dead. In Vangalady gunmen reportedly entered the home of Ratnam Senthuran, a teashop owner, and shot him dead. In the latter incident it is reported that witnesses also described attackers wearing naval uniforms.

It is alleged that the cases have stalled in the Kayts District Court because hearings that were due to take place on 30th August, 2006 were adjourned to March 2007 and again to May 2007 due to a lack of instructions from the Attorney General's Office. On 19 July 2006 the Kayts District Judge Jeyaraman Trotsky warned police officer Mahes Perera and his investigation team who were required to submit a report on the Allaipiddy killings and hold an identification parade that charges of contempt might have to be brought against them for failing to appear before the Court. Following the July 2006 hearing it had been reported that Judge Trotsky requested the Attorney General's Department to advise on how to proceed in view of an absence of cooperation from the Sri Lanka Police. On 21 May 2006 the Inspector General of Police reportedly stated that: "no evidence has been received to the effect that security forces personnel were involved in the killings... Of course, there were speculations but no evidence has been found to support the claim". Investigations into the case by the Jaffna Human Rights Commission Office led to death threats against the head of office and it was reported that witnesses remained in hiding out of fear of reprisals from armed groups.

Without wishing to prejudge the accuracy of these reports, I would recall that all States have "the obligation ... to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and

bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions” (Commission on Human Rights resolution 2004/37, para. 4). This obligation, affirmed also in the jurisprudence of the Human Rights Committee (see the Committee’s views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8), is part of the obligation to respect and protect the right to life enshrined in Article 6 of the International Covenant on Civil and Political Rights to which Sri Lanka is a State Party.

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

1. Are the facts alleged in the summary accurate?
2. Please provide the details, and where available the results, of the police investigation into the killing of the above persons.
3. Please confirm whether witnesses to these attacks have been accorded security and witness protection.
4. Please indicate whether compensation has been provided to the victims and their families.

Response from the Government of Sri Lanka dated 27 September 2007

HE Mr. Dayan Jayatilleka will in due course forward your communications [dated 12 September, 19 September and 20 September 2007] to the competent authorities in Colombo seeking urgent responses to the several alleged events and issues raised by you in the aforementioned communications.

Sri Lanka: Civilians Killed following an Army Attack on a School in Kathiraveli, Batticaloa

Violation alleged: Violations of the right to life during armed conflict

Subject(s) of appeal: 62 persons

Character of reply: Receipt acknowledged

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a substantive response concerning the shelling by the Sri Lankan army in Kathiraveli which resulted in the deaths of 62 people. The SR would note, however, that the Government has already taken longer than the customary 90 days to respond.

Allegation letter dated 12 September 2007

I would like to bring to your Government's attention information I have received concerning reports of a Sri Lankan army attack on a school in Kathiraveli, Batticaloa on 8 November 2006 resulting in the killing of civilians.

According to information I have received:

On 8 November 2006 the Sri Lankan army fired rockets and artillery shells which hit school grounds at Kathiraveli, 15km north of Vaharai in the District of Batticaloa where thousands of internally displaced people (IDPs) were taking shelter, killing 62 persons and wounding 47. Government defence spokesman Keheliya Rambukwella is reported to have said the military had targeted two Tamil Tiger artillery positions in the course of heavy artillery and mortar bomb exchanges but admitted a civilian centre was also hit and accused the LTTE of using civilians as human shields. A Sri Lanka Monitoring Mission spokesperson Helen Olafsdottir reported that SLMM Monitors saw there were no military installations in the camp area stating that it "would like some answers from the military regarding the nature and reasons of this attack".

The Sri Lankan armed forces allegedly failed to take feasible precautions to avoid or minimize civilian casualties, failed to verify that the target was a military objective, and failed to discriminate between military and civilian objectives. These allegations are supported by evidence that the Sri Lankan armed forces conducted area bombardments of civilian areas using multiple barrel rocket launchers.

While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency's Government to the fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

Specifically, your Government is under an obligation to distinguish between combatants and civilians and to direct attacks only against combatants (Rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross ("Customary Rules")). Indiscriminate attacks are prohibited (Rule 11 of the Customary Rules). Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, or village are prohibited (Rule 13 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). All feasible precautions must be taken to avoid and minimize incidental loss of civilian life (Rule 15 of the Customary Rules). This explicitly requires that parties to a conflict must give effective advance warning of attacks which may affect the civilian population (Rule 20 of the Customary Rules).

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

1. Are the facts alleged in the above summary accurate? Please refer to the results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incidents.
2. Please provide the details of any disciplinary measures imposed on or criminal prosecutions against members of the armed forces responsible for the alleged incident.
3. With respect to the allegations of the indiscriminate attack, what, if any, assessment was made to ensure that the attack complied with the rules of international humanitarian law and human rights law? Specifically, what safeguards, if any, were employed to verify that only legitimate military targets were attacked? What methods were adopted to distinguish between military and civilian objects? What precautions were taken in the launching of mortar, artillery, rocket or other attacks to minimize loss of civilian life? What means and methods of warfare were adopted to avoid incidental loss of civilian life, and to ensure that incidental loss of life was not excessive in relation to the anticipated military advantage?
4. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

Response from the Government of Sri Lanka dated 27 September 2007

HE Mr. Dayan Jayatilleka will in due course forward your communications [dated 12 September, 19 September and 20 September 2007] to the competent authorities in Colombo seeking urgent responses to the several alleged events and issues raised by you in the aforementioned communications.

Sri Lanka: Impunity for the Killing of 38 Humanitarian Workers since 2006

Violation alleged: Impunity

Subject(s) of appeal: 38 persons

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the initial information provided by the Government of Sri Lanka concerning the killing of the 17 ACF workers in Trincomalee District and looks forward to be provided with the findings of the Commission of Inquiry and to be kept informed of the progress of the investigation by the Criminal Investigation Division of the Sri Lankan police.

The Special Rapporteur notes that the Government of Sri Lanka has not yet provided him with information concerning the other 21 humanitarian workers listed in his communication and who have been killed since 2006.

Allegation letter dated 19 September 2007

I would like to bring to your Government's attention information I have received concerning the alleged killing of 38 humanitarian workers in Sri Lanka since 2006, including 17 Action Contre la Faim ("ACF") employees in Sri Lanka, in August 2006 and the subsequent official investigations into their killings. It is my understanding that the investigations into the killings have been inconclusive and perpetrators have not been found.

According to information I have received:

17 aid workers of ACF were shot dead in early August, 2006 on the grounds of the ACF office in Muttur. Post mortem records reportedly indicate that 16 of the victims were shot in the head and the 17th in the neck.

It was reported that on the evening of 1-2 August, 2006 the Liberation Tigers of Tamil Eelam (LTTE) attacked Muttur and proceeded to take control. The Government of Sri Lanka reportedly counter attacked. The town was shelled by both parties to the conflict, a number of civilians were killed, and many fled the town. Attempts at evacuating the ACF staff failed. Both the ICRC and the Sri Lankan Army were informed of the presence of the ACF staff at the organization's compound in Muttur.

Official police reports apparently indicate that, right from the outset, the police concluded that the LTTE were responsible for the killings. Seven months after the killing the CID reportedly had not interviewed any member of the Sri Lankan security forces (army or navy), nor any witness other than some of the relatives of those killed.

In addition to this particular case I have received reports concerning the deaths of a significant number of other aid workers (see list of those reportedly killed in the Annex below). The same problem of failure to investigate effectively and to prosecute appears to apply to each of these cases.

While I do not wish to prejudge the accuracy of these allegations I urge your Excellency's Government to take effective measures against what appears to be a failure to investigate effectively, to prosecute and to take measures designed to prevent further assassinations of aid and humanitarian workers.

In this respect, I would like to recall that all States have "the obligation ... to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions" (Commission on Human Rights resolution 2004/37, para. 4). This obligation, affirmed also in the jurisprudence of the Human Rights Committee (see the Committee's views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8), is part of the obligation to respect and protect the right to life enshrined in Article 6 of the International Covenant on Civil and Political Rights to which Sri Lanka is a State Party.

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

1. Are the facts alleged in the summary accurate?
2. Please provide the details, and where available the results, of the police investigations into the killing of the persons listed in the Annex.
3. Please indicate whether witnesses to these attacks have been afforded with adequate security and witness protection.
4. Please indicate whether compensation has been provided to the victims and the families of the victims.

LIST OF HUMANITARIAN WORKERS REPORTEDLY KILLED (SINCE 2006)

Mr. Shanmugaratnam Pathmanathan (HUDEC) – Caritas Jaffna, killed on 9 April 2006, Jaffna

Mr. Chelvendra Pradeepkumar , HUDEC – Caritas Jaffna, killed on 9 April 2006, Jaffna

Mr. Jeyaruban Gnanapragasam, Norwegian Refugee Council (NRC), killed on 16 May 2006, Vavuniya

Mr. Ratnam Ratnaraja, North East Irrigated Agriculture Project (NEIAP), killed on 26 May 2006, Kalviyankadu, Batticaloa

Mr. Rasiah Muraleeswaran, Mason in a Tsunami Housing Scheme funded by FORUT, killed on 8 July 2006, Polikandy, Vadamarachchy, Jaffna

Ms. Kokilavathani, Action Contre la Faim, killed on 4/ 5 August 2006, Mutur, Trincomalee

Ms. Romila, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Ms. Kavitha, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Mr. Kovarthani, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Mr. A.L. Mohammed Jawffar, Action Contre la Faim, killed on 4/ 5 August 2006, Mutur, Trincomalee

Mr. Sritharan, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Mr. Kodeeswaran, Action Contre la Faim, killed on 4/ 5 August 2006, Mutur, Trincomalee

Mr. Jaseelan, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Mr. Ganesh, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Mr. Narmathan, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Mr. Ketheswaran, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Mr. Rishikesan, Action Contre la Faim, killed on 4/ 5 August 2006, Mutur, Trincomalee

Mr. Muralitharan, Action Contre la Faim, killed on 4/5 August 2006, Mutur, Trincomalee

Mr. Arulrajah, Action Contre la Faim, killed on 4/ 5 August 2006, Mutur, Trincomalee

Mr. Pratheepan, Action Contre la Faim, killed on 4/ 5 August 2007 in Mutur, Trincomalee

Mr. Koneswaran, Action Contre la Faim, killed on 4/ 5 August 2006, Mutur, Trincomalee

Mr. Anantharajah, Action Contre la Faim, killed on 4/ 5 August 2006, Mutur, Trincomalee

Mr. Nagarasa Thavaranjitham, Sri Lanka Red Cross Society, killed on 20 August 2006, Cheddikulam, Vavuniya

Mr. P. Jestly Julian, UNOPS, killed on 24 August 2006, Thirukkivil, Ampara

Mr. Sathiyamoorthy, Sewalanka, killed on 1 September 2006, Karavedyy, Jaffna

Mr. Rangunathan Ramalingam, World Concern, killed on 12 September 2006, Nilaveli Road, Trincomalee

Mr. Sabaratnam Rubesh, Terre des Hommes, killed on 23 November 2006, Kalmunai, Ampara

Mr. Muthuraja Aruleswaran, Tamil Rehabilitation Organisation (TRO), killed on 24 March 2007, Mannar

Mr. W. Chandrasiri, Village of Hope, killed on 1 April 2007, Maliampaaveli, Batticaloa

Mr. T. M. Dhanapala, Village of Hope, killed on 1 April 2007, Mailampassveli, Batticaloa

Mr. W. Dhanapala, Village of Hope, killed on 1 April 2007, Mailampassveli, Batticaloa

Mr. T. Wijekoon, Village of Hope, killed on 1 April 2007, Mailampassveli, Batticaloa

Mr. L. M. Dayananda Kapporal, Village of Hope, killed on 1 April 2007, Mailampassveli, Batticaloa

Mr. Maduranga Kapporal, Village of Hope, killed on 1 April 2007, Mailampassveli, Batticaloa

Mr. S. Shanmugalingam, Sri Lanka Red Cross Society, killed on 2 June 2007, Colombo/Ratnapura

Mr. Karthakesu Chandramohan, Sri Lanka Red Cross Society, killed on 2 June 2007, Colombo/Ratnapura

Mr. Arumainayagam Alloysius, Danish Refugee Council, killed on 23 July 2007, Jaffna

Mr. Sivasamy Sritharan, Danish Demining Group (DDG), killed on 20 August 2007, Kasthooriar road, Jaffna

Response from the Government of Sri Lanka dated 27 September 2007

The Government responded to the letters sent on 12 September 2007, 19 September 2007 and 20 September 2007

HE Mr. Dayan Jayatileka will in due course forward your communications to the competent authorities in Colombo seeking urgent responses to the several alleged events and issues raised by you in the aforementioned communications. However, pending such detailed responses, with the aid of the presently available information at my Mission, I wish to place before you the following information and comment for your consideration.

Incident involving the killing of 17 workers of ACF

The town of Muttur in the Trincomalee District of the Eastern Province of Sri Lanka, came under terrorist attack by the LTTE in early August 2006. The attack commenced in the late hours of the 1st of August 2006, and security forces of the government took immediate steps to repulse the attack. However, it was after several days that the security forces were able to regain control of the town. LTTE long range artillery fell on civilian areas of Muttur including on the government hospital, forcing virtually all the residents of the town to flee the area in search of secure locations on 2nd August 2006. LTTE cadres had temporarily gained control over most parts of the Muttur town from midday of the 2nd August 2007. Security forces of the government who were inducted to Muttur from the northern and southern boundaries of the town, faced severe resistance from the LTTE, but were able to penetrate LTTE forward

lines and enter the city. After the security forces secured the area on the 6th August 2006, civilians commenced returning to their homes.

According to available material, 17 workers of the ACF project office in Muttur (situated very close to the government hospital compound) had remained at the project office, notwithstanding virtually all residents of the entire neighbourhood fleeing the area. Their bodies were found by the police in the evening of the 6th August 2006 at the compound of the project office. ACF workers had ceased communicating with the ACF office in Trincomalee and with their family members, in the early hours of the 4th August 2006, indicating that they were killed in the early hours of the 4th August 2006.

Following the receipt of information regarding the killing of the ACF workers in Muttur, a special team of police investigators were entrusted to investigate into the incident. A Magisterial inquest was initiated and post mortem examinations into the remains of the deceased were conducted by a consultant judicial medical officer. Thereafter, the remains of the 17 deceased were handed over to their families. Due to the nature of the killings, within the first week following the killings, the Criminal Investigation Department (which is the premier criminal investigation agency of the Sri Lanka Police) took over the investigations into the incident. Criminal investigators were successful in collecting empty firearm bullet casings from the scene of the crime. Statements of several key witnesses were also recorded by the police.

Due to the need to ensure that detailed scientific investigations are conducted into the incident, the Government of Sri Lanka requested the Australian Government to provide technical assistance to the local investigators. The Government of Australia made available, to the Sri Lankan authorities the services of an Australian Forensic Pathologist. In October 2006 the bodies of 10 deceased which had been buried were exhumed under magisterial supervision and a second round of post mortem examinations were conducted. During this round, several firearm projectiles were found and collected for ballistics examinations in the presence of the Australian Forensic Pathologist. Subsequently, the projectiles were examined by the foremost ballistics expert at the Sri Lanka Government Analyst Department, and he concluded that all projectiles were of 7.62 calibre. However, Dr. Malcolm Dodd who is an Australian Forensic Pathologist, who was associated with the Sri Lankan Forensic Pathologist on the occasion of the second round of post mortem examinations at which these projectiles were recovered, issuing a report, expressed the view that one of the projectiles recovered was not of the 7.62 calibre, but was of the 5.56 calibre. Relying on this opinion of the Australian ballistics expert, the International Commission of Jurists (ICJ) rushed to an erroneous conclusion and issued a public report (commonly referred to as the Birnbaum Report) alleging that there was evidence of productions tampering and cast aspersions on the integrity of the investigations conducted by the Sri Lankan authorities. Having noted the opinion of Dr. Dodd on the identification of the projectile in issue, the Sri Lankan ballistics expert insisted on the accuracy of his findings and presented scientific evidence and criteria based on which he arrived at his findings. This material was made available to the public by the Attorney General of Sri Lanka and was also submitted to Dr. Dodd. Dr. Dodd issuing a supplementary report has now confirmed that his previous finding was erroneous and that in fact the projectile in issue is of the 7.62 calibre. Dr. Dodd has also specifically stated that, he never thought that the projectile in issue had been

substituted, and has categorically refuted the suggestion made in the Birnbaum Report of the International Commission of Jurists that there was evidence of deliberate substitution of an exhibit. Thus, the supplementary report of Dr. Dodd clearly and finally solves the entire issue, and makes it abundantly clear that all projectiles recovered from the remains were in fact of the 7.62 calibre and that the integrity of the productions and the findings of the Sri Lankan experts are valid.

In November 2006, the President of Sri Lanka appointed a Commission of Inquiry to investigate and inquire into 15 incidents amounting to serious violations of Human Rights. The killing of 17 workers of the ACF was the first incidents on the schedule of incidents of the warrant appointing the Commission. The work of this Commission is being observed by an International Independent Group of Eminent Persons. The first case undertaken to be investigated and inquired into by this Commission, is the killing of the 17 ACF workers. The investigation conducted by the Commission is in progress. The material collected by the Commission based on investigations conducted so far remains confidential. Public inquiries into the incident are likely to commence shortly.

When the findings of the Commission of Inquiry are made public, Sri Lanka's Permanent Mission in Geneva will promptly forward to you the said findings. Furthermore, as the 'Criminal Investigation Department is also continuing with their investigation into this incident, the Mission will in due course present to you its findings, no sooner the investigation is completed.

Please be assured Mr. Alston, that all allegations pertaining to Human Rights violations made against the members of the security forces and the police will be promptly and comprehensively investigated into by the competent authorities of Sri Lanka, and indeed those found responsible for such violations will be dealt with in accordance with the prevailing Sri Lankan law.

Sri Lanka's Mission in Geneva will continue to keep you informed of the progress made with regards to investigations, inquiries and prosecutions pertaining to the incidents referred to in your communication.

Sri Lanka: Death in Custody of Thadallage Chamil Weerasena

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Receipt acknowledged

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a substantive response concerning the death in custody of Thadallage Chamil Weerasena. The SR would note, however, that the Government has already taken longer than the customary 90 days to respond.

Allegation letter dated 20 September 2007

I am writing concerning the death of Mr. Thadallage Chamil Weerasena at Ratgama Police Station on 21 July, 2007.

According to information received:

Mr. Thadallage Chamil Weerasena was arrested on the above date and taken to Ratgama Police Station, Galle District. The victim's mother travelled to the police station the same morning and observed her son detained in a police cell but was reportedly prevented from approaching the cell by police officers. A friend of the victim who was able to visit him later the same day stated that the victim reported being assaulted by the police. The victim's elder brother and mother returned to the police station later that day where they saw the victim's dead body lying inside the police cell covered in a sarong. A relative observed injuries to the back, chest and face of the victim, including blood to his head.

It was reported that on 22 July, 2007 a doctor took photographs of the body and that a magistrate indicated later in a letter that Mr. Weerasena died of hanging. Three years previously the police had reportedly filed charges against Mr. Weerasena for possession of drugs and the case was still pending before court at the time of his death.

Without in any way implying any conclusion as to the facts of the case, I would like to recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) to which Sri Lanka is a Party, enshrines the right not to be arbitrarily deprived of one's life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, I would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermot Barbato v. Uruguay*, communication no. 84/1981 (1990)): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermot committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

I should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the death of the person named above. I would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, "stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed;"

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the case of Mr Weerasena.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation has been provided to the family of the victim.

Response from the Government of Sri Lanka dated 27 September 2007

HE Mr. Dayan Jayatilleka will in due course forward your communications [dated 12 September, 19 September and 20 September 2007] to the competent authorities in Colombo seeking urgent responses to the several alleged events and issues raised by you in the aforementioned communications.

Sri Lanka: Assassination of Thiyagarajah Maheswaran

Violation alleged: Impunity

Subject(s) of appeal: 1 male

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Sri Lanka concerning the killing of Thiyagarajah Maheswaran. However, the SR notes that he has received no information concerning the reasons which prompted the decision by the Government to reduce his security detail.

Allegation letter dated 21 January 2008 sent with Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding Mr Thiyagarajah Maheswaran. Mr Thiyagarajah Maheswaran was a Colombo district parliamentarian of the opposition United National Party (UNP) and former Hindu Affairs Minister.

According to information received:

On 1 January 2008, Mr Thiyagarajah Maheswaran was reportedly killed by an unknown gunman. According to reports, Mr Maheswaran's assassination took place a few hours after he had told media in Colombo that he would reveal details in Parliament of government involvement in abductions and killings in Jaffna allegedly carried out by the Eelam People's Democratic Party (EPDP) paramilitary. In December 2007, the Government of Sri Lanka had reportedly reduced the security provided to Mr Thiyagarajah Maheswaran as a parliamentarian from eighteen persons to only two.

Concern is expressed that the reduction of the security detail of Mr Thiyagarajah Maheswaran may have been linked to his human rights activities. Further concern is expressed that the subsequent killing of Mr Thiyagarajah Maheswaran may have been related to his work in defence of human rights.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

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

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would like to refer to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

We also wish to draw the attention Your Excellency's Government to The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council resolution 1989/65 of 24 May 1989. In particular, principles 4 and 9 to 19 oblige Governments to guarantee effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions.

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

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged on behalf of Mr Thiyagarajah Maheswaran?
3. Please provide details about the reasons which prompted the reduction in December 2007 of the level of security provided to Mr Thiyagarajah Maheswaran?
4. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the killing of Mr Thiyagarajah Maheswaran, and how they conform to international standards. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; will penal, disciplinary or administrative sanctions be imposed on the alleged perpetrators?

Response from the Government of Sri Lanka dated 26 March 2008

Hon. T Maheshwaran MP and two others died and 10 others were injured on 1 January 2008 at the Sivam Kovil in the Kotahena police area in a shooting incident. The injured included the security officer of the MP, Police Constable 52152 Dharmasiri of the Ministerial Security Division.

Following investigations, one Johnson Colin Valentino alias Vasanthan of No 639/3, Beach Road, Jaffna and six others were taken into custody. Moreover, a Pistol and 7 empty bullets were recovered. Police Constable Dharmasiri identified Valentino alias Vasanthan as the person who shot Mr Maheshwaran. The suspect has stayed at Wattala, a suburb in the outskirts of Colombo for 10 months prior to the incident. It has been revealed that he had left his home in Jaffna in 1995 and joined the Liberation Tigers of Tamil Eealam (LTTE) in 2000. It has also been revealed that both his father and the mother have been working as LTTE cadres in the propaganda section of the outfit since 1987 and are presently staying in Vanni, an area of Sri Lanka temporarily controlled by the LTTE.

The suspect initially denied any involvement in the crime but later admitted that he committed the crime on instructions from the LTTE. The name given to him by the LTTE is Tamil Tishen and his number is Iyyanna 1527. He had undergone extensive weapons training in LTTE camps in Kilinochchi and Iranamadu. In August 2006 his handler named Madivan Master has sent him to Colombo and arranged for him to stay at Wattala. Another LTTE cadre named Raju who is living in Colombo had established contacts with Vasanthan and on 31 December 2007, given the pistol and 39 bullets to assassinate Mr Maheshwaran.

On 1 January 2008 Vasanthan had come to the St Anthony's Church at Kotahena with Marina Evangeline, the landlady of the house he stayed at Wattala and one Francis Sudarshan. He carried with him the pistol and 14 bulles having hidden the remaining 25 bullets on the roof of the toilet of the house where he stayed. Police subsequently recovered the live bullets. While the prayers were going on at the St Anthony's Church, he had come to the nearby Sivam Kovil and shot Mr Maheshwaran who was there. At that point the security officer of the MP, Police Constable Dharmasiri had shot at the suspect. Having been injured in the hand, the pistol had dropped from the suspect's hand in the Kovil and he had disposed of the remaining bullets in a nearby drain and fled the Kovil. Raju at this point had called Vasanthan on his mobile phone to inform that he was nearby and requested him to come to where he was immediately. However, due to his injuries, he had lost consciousness and fell on the ground. He was admitted to Colombo National Hospital by Sudarshan and another person named Terrence.

It has been revealed that Vasanthan had opened a bank account No 8120028134 at the Commercial Bank Kotahena on the instructions of the LTTE. Remittances by unknown persons have been made to this account at Wattala, Union Place, Dehiwala, Kotahena branches of the bank. Remittances have also been made from foreign countries such as UK and Norway.

Vasanthan had obtained a National Identity Card No 842884098v from the Department of Registration of Persons. It has been established that the Identity Card was a genuine one. However, according to him, he had never applied for a National Identity Card on his own. Therefore, it is suspected that the LTTE had submitted an application with a forged signature of the applicant and obtained the Identity Card.

During the post mortem, 6 fragments of bullets were recovered from the body of deceased Hon. T Maheshwaran. These were sent to the Government Analyst for comparison with the bullets of the pistol taken into custody from the suspet's possession. Moreover, a DNA report was called on the blood samples of the suspect

and the sample of the blood contained in the pistol used by the suspect. The DNA report has confirmed that the blood stains on the pistol matched with the suspect's blood.

The suspects are being detained on detention order and further investigations are being conducted by the Colombo Crimes Division of the Sri Lanka Police. Facts have been reported to Magistrate's Court Colombo under No B 9528/3/8 and the next court date is 7 March 2008. Investigations are at the concluding stage and extracts of investigation will be sent to the Attorney General for advice, as soon as the investigations are concluded.

Sudan: Death Sentences of Seven Men

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 7 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 23 January 2007 sent with Special Rapporteur on the question of torture

In this connection, we would like to draw your Excellency's attention to information we have received regarding Mr. **Paul John Kaw**, Mr. **Fathi Adam Mohammed Ahmad Dahab**, Mr. **Idris Adam Alyas**, Mr. **Nasr-al-Din Ahmad Ali**, Mr. **Sulayman Jum'a Timbal**, Mr. **Badawi Hasan Ibrahim** and Mr. **Abd-al-Rahim Ali** who were sentenced to death on 23 November 2006 for the murder of 13 police officers killed during riots which took place in May 2005 at a camp for internally displaced people. The men were sentenced to death after the relatives of the dead police officers refused to spare their lives in return for payment of diya (blood money).

According to the information received:

On 18 May 2005 there were riots at the Soba Aradi camp, 30km south of Khartoum, when the inhabitants resisted the authorities' attempt to forcibly evict all of them. There were violent clashes, and 13 policemen and about 30 residents, including children, were killed.

On 24 May the security forces threw a cordon round the area, not allowing anyone to enter or leave while they raided the residents' houses and shacks, arresting some 240 people, most of whom were subsequently released. They were held in various police stations and most were severely beaten in the following weeks. At least one

reportedly died in custody in circumstances where torture appears to have caused his death.

Concern has been expressed that the seven men confessed to their murder charges under torture. This included severe beatings. They had no access to legal counsel until October 2005, when they had been in custody for five months. Three members of the family of Fathi Adam Mohammed Ahmad Adam, including his 70-year-old mother and 15-year-old brother, were arrested and held for three days to force him to give himself up.

While we do not wish to prejudge the accuracy of these allegations, we would like to respectfully remind your Excellency that according to the well-established international standard in capital punishment cases, the obligation of states to observe rigorously all the guarantees for a fair trial admits no exception. (See, *Little v. Jamaica*, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the case at issue, this guarantee includes the right not to be compelled to confess guilt.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, *inter alia*, in article 15 of the Convention against Torture provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of defendants in compliance with the obligations under international law of your Excellency's Government, as outlined above. This can only mean suspension of the capital punishment until the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting someone to torture is ensured.

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

1. Are the facts reproduced in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that the defendants were subjected to torture while in pre-trial detention. If no enquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide the full details of any prosecutions which have been undertaken with regard to the alleged torture of the defendants. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

Sudan: Death sentence of Amouna Abdallah Daldoum and Sadia Idries Fadul

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 females

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Sudan with respect to the death sentences of Amouna Abdallah Daldoum and Sadia Idries Fadul.

The Special Rapporteur regrets that he has not been provided with the requested statistics on the number of people sentenced to death under Article 146(a) of the Penal Code and their gender breakdown.

Urgent Appeal dated 21 March 2007 sent with the Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the question of torture and Special Rapporteur on violence against women, its causes and consequences

We would like to draw the attention of your Government to information we have received regarding the sentencing to death by stoning of Ms. **Amouna Abdallah Daldoum** (23 years old) and Ms. **Sadia Idries Fadul** (22 years old from the Tama ethnic group), by the Criminal Court of Al-Azazi, in Managil province, Gazeera state. According to the information received:

On 13 February 2007 and 6 March 2007 respectively, the Criminal Court of Al-Azazi, with Judge Hatim Abdurrahman Mohamed Hasan presiding, convicted Ms. Sadia Idries Fadul and Ms. Amouna Abdallah Daldoum on charges of adultery and sentenced them to death by stoning. The two women are currently in detention in Wad Madani women's prison in Wad Madani, Gazira State. Ms. Sadia Idriess Fadul has one of her children with her in prison. The two women were reportedly convicted under article 146 (a) of Sudan's 1991 Penal Code, which states that "whoever commits the offence of sexual intercourse in the absence of a lawful relationship shall be punished with: a) execution by stoning when the offender is married (muhsan); b) one hundred lashes when the offender is not married (non-muhsan)."

Sadia Idriess Fadul and Amouna Abdallah Daldoum do not fully understand Arabic, the language used during the entire judicial proceedings, and were not provided with an interpreter. The two women also had no legal representation.

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences. These minimum fair trial guarantees are set forth *inter alia* in article 14 (3) of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by your Government. It states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [...] (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. [...] (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court."

It is our view that the death penalty as applied in this case does not fall within the category of the "most serious crimes" for which international law, in particular Article 6(2) of the ICCPR, countenances its possible application. In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty "for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life" (CCPR/C/28/Add.15, 3 August 2003, paragraph 8).

We would also like to draw your Government's attention to Resolution 2005/39 of the Commission on Human Rights, which reminded Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment, and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime.

We would finally like to express the concern that the imposition of the death penalty for the offence of sexual intercourse in the absence of a lawful relationship might disproportionately affect women. In the case of Ms. Sadia Idries Fadul it is, e.g.,

reported that the man questioned in connection to the unlawful sexual intercourse was discharged on grounds of lack of evidence after denying adultery.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Sadia Idries Fadul and Ms. Amouna Abdallah Daldoum are respected. This means in the first place that the death sentence against them be expeditiously lifted.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international law.

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

1. Are the facts alleged in the above summary of the case accurate? In particular, is it accurate that the defendants were not assisted by lawyers?
2. What are the remedies open to Ms. Sadia Idries Fadul and Ms. Amouna Abdallah Daldoum and at what stage are the proceedings in their cases?
3. Please provide information with regard to the number of persons currently sentenced to death in the Sudan under Article 146(a) of the Penal Code? What percentage of them are women?

Response from the Government of Sudan dated 20 April 2007

On 26 June 2006, a report was filed with the Azazi police in Jazirah State against Ms. Sadia Idries Fadul. Following the completion of inquiries, the report was referred to a court of first instance of Jazirah State, which delivered its verdict on 13 March 2007, in case No. 10/2007, convicting the accused under article 146 (1) (a) of the 1991 Criminal Code (the penalty for adultery) and based on her confession. The accused is married and engaged in intercourse with others during the husband's absence. Ms. Amouna Abdallah Daldoum was tried before a court of first instance of Jazirah State, in case No. 24/2007. She was convicted by the court on 6 March 2007 under article 146 (1) (a) of the 1991 Criminal Code (the penalty for adultery) and based on her confession. The accused is married and engaged in intercourse with others during the husband's absence.

The two women appealed the verdicts and the Jazirah State Appeal Court issued a ruling overturning the convictions and sentences and returning the case files for a retrial of the two women for a number of reasons, including the fact that they had not had legal assistance during the proceedings.

The two women know Arabic very well and so the court did not have to appoint an interpreter, in accordance with article 137 of the 1991 Code of Criminal Procedures.

The case files are before the Jazirah State court of first instance with a view to the retrial of the two women on instructions from Al-Jazirah Appeal Court.

Sudan: Death Sentences of Abdelrhman Zakaria Mohamed and Ahmed Abdullah Suleiman

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males (juvenile offenders)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Sudan and welcomes the information that the death sentences of Abdelrhman Zakaria Mohamed and Ahmed Abdullah Suleiman were quashed on appeal.

Urgent appeal dated 22 May 2007 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding **Abdelrhman Zakaria Mohamed** and **Ahmed Abdullah Suleiman**, both aged 16 who were reportedly sentenced to death by the Criminal Court, in Nyala on 3 May, 2007. Abdelrhman Zakaria Mohamed was found guilty of ‘murder’, ‘causing injury intentionally’ and ‘robbery’ in connection with a burglary in February 2007 which resulted in the stabbing of two persons, one fatally. Ahmed Abdullah Suleiman was convicted of being an accomplice. It is our understanding that an appeal against the sentences was due to be submitted to the court of appeal in Nyala on 15 May.

While we not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention to the fact that the executions of Abdelrahman Zakaria Mohamed and Ahmed Abdullah Suleiman would violate Sudan’s international legal obligations. In particular, such executions would be explicitly contrary to Article 37(a) of the Convention on the Rights of the Child which provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age, and to Article 6(5) of the International Covenant on Civil and Political Rights which provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age. Sudan is a party to each of these treaties and is thus bound by these provisions.

It is our responsibility under the mandates provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human

Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? If not, please provide information and documents proving their inaccuracy.
2. If the above facts are accurate, please provide details of the outcome of the appeal before the Court of Appeal of Nyala.
3. Given the urgency of the matter, if the above facts are correct, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons.

Response from the Government of Sudan dated 23 June 2007

On 3 May 2007, the two defendants were convicted under Articles 130 and 175 (murder and robbery) of the 1991 Criminal Code and were sentenced to death by the Criminal Court. The verdict was appealed and the Appeal Court rendered its decision on 10 July 2007, quashing the death sentence, because the defendants were under the legal age, and directing the authorities to take such appropriate measures as have been established for the rehabilitation and reform of minors.

Sudan: Killing of Protestors in Northern State in June 2007

Violation alleged: Deaths due to excessive use of force by law enforcement officials

Subject(s) of appeal: 4 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 12 September 2007 sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

We would like to bring to your to your Government's attention information we have received concerning reports of killings of protestors by the security forces in connection with the construction of a hydropower dam in the Kajbar area, northern State.

According to information we have received:

On Wednesday 13 June 2007 Sudanese security forces shot dead four civilians and injured eleven close to the Kajbar Dam site in the Nubia area of northern Sudan. On this day it was reported that five hundred protestors set out on a protest march from the hamlet of Jeddi heading heading for authorities based

in Sabu, to hand over a memorandum apparently in light of the fact that they been neither consulted nor informed about the commencement of the dam construction. Those shot dead were named as Abdelmuezz Mohamed Abdelrahim, Mohamed Faqir Mohamed Sid Ahmed, Al Sadeg Salim, and Sheikh Eddin Haj Ahmed. It was reported that three of the four who died were shot in the head, the remaining person in the chest.

Whilst police claimed they had fired live rounds in self defence, this was contradicted by eye witnesses who stated that the protestors were peaceful and unarmed. Security officers, thought to belong to the Central Reserve Police fired tear gas at the crowd. Security forces several hundred metres away from protestors thereafter opened fire with live ammunition and without warning. Immediately after the protests the deputy Governor of northern State gave a statement to local media condemning the violent repression of the protests promising to bring the perpetrators to justice. The following day these statements were retracted by the Governor, who also announced on 19 June, 2007 that a Committee of Investigation would be established by the authorities.

Whilst we do not want to prejudge the accuracy of these reports, we consider it appropriate to bring to your Government's attention the principles governing the lethal use of force in the dispersal of protests under international law. We would respectfully refer your Government to Article 6 of the International Covenant on Civil and Political Rights, to which Sudan is a party, and which provides that no one shall be arbitrarily deprived of his or her life. Article 3 of the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990) provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces facing allegedly violent crowds:

Article 3 states "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." It thus sets forth the twin safeguards of necessity and proportionality in the use of force.

Principle 9 reads:

"Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." (emphasis added)

In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement and necessary, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle

was reiterated by the 61st session of the Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

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

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the International Covenant on Civil and Political Rights, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order, the protection of public health or morals of the protection of the rights and freedoms of others".

We urgently appeal to your Excellency's Government to ensure that any ongoing operations by the security forces in northern State conform to these principles.

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

1. Are the allegations in the above summary of the events accurate?
2. What were the instructions given to the security forces before and during the operation in Kajbar area? How did the security forces ensure compliance with the requirements of necessity and proportionality?
3. Please provide the details on how the actions undertaken by the security forces regarding this case are compatible with international norms and standards of the right to freedom of opinion and expression and in particular the related right to peaceful assembly and association?
4. Please provide the details, and where available the results, of the Committee of Investigation, and judicial or other inquiries carried out in relation to this case.
5. Will those injured by the security forces and the family members of those killed be compensated?
6. Please reply to the joint allegation letter dated 5 July, 2006 concerning the killing of protestors at Marawi in April 2006.

Syrian Arab Republic: Honour Killing of Huda Abu Assaly

Violation alleged: Impunity for honour killings

Subject(s) of appeal: 1 female

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the general information provided by the Government of the Syrian Arab Republic on the provisions of the Syrian Criminal Code related to honour killings. However, the SR regrets that no information has been provided in relation to the killing of Huda Abu Assaly or in relation to any subsequent criminal proceedings.

Urgent appeal dated 22 August 2006

I am writing in relation to information that I have received about a continuing pattern of honour killings in the Syrian Arab Republic in which women are killed by a family member, usually because she has married outside her religion or because of suspicions of sexual impropriety.

Most recently, I have received information regarding **Huda Abu Assaly**, who was stabbed and shot to death by her brother in late August for having married a Christian man.

While I do not wish to prejudge the accuracy of these allegations, there would be ground for serious concerns if they were correct. To the extent that honour killings are not met with stringent punishments, the State acquiesces in the practice. As a State Party to the *International Covenant on Civil and Political Rights*, the Syrian Arab Republic has assumed the legal obligation to ensure the right to life by effectively punishing those who commit murder. Article 6(1) recognizes that every human being has the right not to be arbitrarily deprived of his or her life. Article 2(1) requires the State to ensure to all individuals within its territory the rights recognized in ICCPR, without distinction as to sex. Article 2(2) elaborates that each State Party must undertake all necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the ICCPR. These obligations are not mere formalities: The punishments imposed may not be so lenient as to invite future violations. As I noted in my report to the Commission on Human Rights, “Crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators. . . .” (E/CN.4/2005/7, para. 71.)

In this context, I urge your Government to take all necessary measures to prevent and punish honour killings.

While I do not wish to prejudge the accuracy of the facts reports in this incident, it is my responsibility under the mandate provided to me by the Commission on Human

Rights to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Commission I would be grateful for your responses to the following questions:

1. Are the facts alleged in the above summary accurate?
2. Please provide the details and results of any investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to this incident.
3. Please provide the full details of any prosecutions or disciplinary proceedings that have been undertaken in connection with this incident. Please include information on any penalties imposed.
4. If compensation has been provided to the family of the victim, what was its amount? I undertake to ensure that your Government's response to each of these questions is accurately reflected in the report I will submit to the Commission on Human Rights for its consideration.

Response from the Government of the Syrian Arab Republic dated 13 February 2007

The Syrian Code was issued by Legislative Decree No. 148 of 1949 and many of its articles are based on the French Criminal Code, while some are based on the Polish Criminal Code and the Italian Criminal Code. According to this Code and the other criminal laws in force in Syria, no one residing in the territory of the State may commit an offence without being prosecuted for it in accordance with due process, regardless of whether the offence is an honour crime or any other kind of offence. The legislature devotes section 2, chapter 11, of the Code to offences against liberty and honour, prescribing the appropriate penalties for each such offence.

If there are cases where the motive of honour may constitute an extenuating circumstance, this does not apply to men alone. The provision is a general one, insofar as it benefits men and women equally. Penalties are based on purely general rules which the courts apply in an objective manner to anyone found guilty of a material, moral and legally designated offence. The courts remain the only authority authorized to determine how far an offence correlates to a legal provision and to render appropriate judgements in each case of which they are seized, based on the evidence presented to them.

Syrian Arab Republic: Death in Custody of Abdul Moez Salem

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Syrian Arab Republic on the death of Abdul Moez Salem.

Allegation letter dated 23 August 2007 sent with the Special Rapporteur on the question of torture

We would like to bring to your to your Government's attention information we have received concerning Abdul Moez Salem, son of Mohammed Basheer Salem from Areeha (Idlib). According to the allegations received:

Abdul Moez Salem disappeared from Areeha two years ago. He was detained in the Palestine Branch for Military Interrogation (Branch 235). Several months ago, on an unspecified day, Abdul Moez died following injuries he received during his time in custody. Subsequently his body was stored in a fridge for the deceased. His corpse was handed to his family on 4 July 2007 in a black bag, but Military Intelligence did not allow the family to see him or prepare his body for burial. The officers refused to bury Abdul Moez in the town's graveyards and supervised the burial.

Without in any way implying any conclusion as to the facts of the case, we recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right not to be arbitrarily deprived of one's life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. This means that a State is presumed to be responsible for the death of the person under international law, unless clear evidence to the contrary emerges, explaining how the death occurred. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (1990)): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

We should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the death of Abdul Moez Salem. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, "stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed".

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

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

Response from the Government of the Syrian Arab Republic dated 27 February 2008

Mr. Abd al-Mu`azz Salim was taken into custody on 23 December 2006 on a charge of belonging to Al-Qaida. It transpired that he did in fact belong to the organization, having participated with a number of others in several courses on carrying out unlawful terrorist activities. Five days later, on 28 December 2006, while the investigation was still under way, Mr. Salim, who had been subjected to no form of physical or mental coercion, hanged himself. He was rushed to the Military Hospital where all the requisite emergency procedures were carried out, but to no avail, since he died. His body was delivered to his family for burial.

The Government adds that the report attached to its reply provides details of the investigation conducted by the Office of the Military Prosecutor, which examined the circumstances and the cause of death and which confirms that the allegations received by the two Special Rapporteurs are untrue.

In conclusion, the Government of the Syrian Arab Republic, in expressing its gratitude and appreciation for the efforts of the Special Rapporteurs to safeguard human rights, can confirm that Mr. Salim was not subjected to torture. Everything possible was done to protect his physical and psychological welfare, in keeping with the commitment of the Syrian Government to protecting all Syrian citizens and upholding the relevant Syrian and international laws.

Thailand: Death Sentences of Wichai Somkhaoyai and Bualoi Posit

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Thailand in relation to the death sentences of Wichai Somkhaoyai and Bualoi Posit.

Urgent appeal dated 1 February 2006

I would like to draw the attention of your Government to information I have received regarding:

the imposition of the death sentence against Messrs. Wichai Somkhaoyai and Bualoi Posit, the two men found guilty of the rape and murder of Katherine Horton, a tourist from the United Kingdom, on 1 January 2006. My concern with this case is raised by the extraordinary speed with which the two suspects were tried, convicted and sentenced to death. It is my understanding that Ms. Horton's body was found on 2 January 2006, and Wichai Somkhaoyai and Bualoi Posit were arrested on 7 or 8 January 2006. By 9 January 2006 they had reportedly confessed to the crime. On 13 January 2006, the two men were tried at Surat Thani. According to the information received, the two men confessed to the police, and limited themselves to confirming their statements to the police at trial. Reports state that DNA samples were taken and matched with DNA traces found on the victim's body. On 18 January 2006, the Surat Thani court delivered the guilty verdicts and sentenced Wichai Somkhaoyai and Bualoi Posit to death.

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. This includes the presumption of innocence, right to a trial by an independent and impartial tribunal and the right to adequately prepare one's defence. "In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10).

It is in the light of these guarantees with which international law surrounds the imposition of the death penalty that I would raise my concerns regarding the extraordinary speed with which capital punishment has been imposed in this case. The fact that Wichai Somkhaoyai and Bualoi Posit have confessed the crime does not render their right to adequately prepare their defense and to receive a full and fair trial redundant. The speed with which the death penalty was imposed is all the more

alarming in the light of the statements allegedly made by the Prime Minister of your Excellency's Government before the sentencing, calling on the death sentence to be imposed because of the damage the crime caused to Thailand's image.

I understand that the judgment and sentence against Wichai Somkhaoyai and Bualoi Posit will be reviewed by an appeals court, and urge your Excellency's Government to ensure that the adequacy of the first instance trial is closely scrutinized in the course of those appeals proceedings.

The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment. Without in any way pre-judging the accuracy of the information I have received, I would respectfully request Your Excellency's Government to provide me with the following information regarding the criminal proceedings against Wichai Somkhaoyai and Bualoi Posit:

- a) did they confess to the rape and murder in the presence of a lawyer acting on their behalf?
- b) how much time did the lawyers assigned to act on behalf of Wichai Somkhaoyai and Bualoi Posit have to prepare for the trial?
- c) details concerning the DNA evidence.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on this case to the Commission, I would be grateful for your cooperation and your observations. In addition to an expeditious first reply, I would greatly appreciate being informed about the further developments in this case. I undertake to ensure that your Government's response is accurately reflected in the report I will submit to the Commission on Human Rights for its consideration.

Response from the Government of Thailand dated 28 April 2007

Mr. Wichai Somkhaoyai and Mr. Bualoi Posit were found guilty of the rape and murder of Ms. Katherine Horton, a tourist from the United Kingdom, on 1 January 2006. Ms. Horton's body was found on 2 January 2006 and Mr. Wichai Somkhaoyai and Mr. Bualoi Posit were arrested on 7 and 8 January 2006, respectively. By 9 January 2006, they had confessed to the crime. DNA samples were taken and they matched the DNA traces found on the victim's body. On 13 January 2006, the two men were put on trial in Suret Thani Province. They confessed to the charges and did not call any witness. On 18 January 2006, the Suret Thani court delivered the guilty verdicts and sentenced Mr. Wichai Somkhaoyai and Mr. Bualni Posit to death.

Concerns have been raised regarding adequate protection of the defendants' right to life under international human rights law as well as domestic legislation.

1. Did the two confess to the rape and murder charge in presence of a lawyer acting on their behalf?

Clarification

Yes. The two defendants confessed to the rape and murder charges during the interrogation in the presence of their lawyers (Mr. Phnompetch Namuang and Mr. Amarin Nuimai) who were appointed by the Court of First Instance.

2. How much time did the lawyers assigned to act on behalf of Mr. Wichai Somkhaoyai and Mr. Bualoi Posit have to prepare for the trial?

Clarification

The two defence lawyers (Mr. Natnuang and Mr. Nuimai) were assigned to the case from the very beginning of the investigation process. The lawyers were also present in court throughout the trial.

3. Details concerning the DNA evidence.

Clarification

The DNA collected from the two defendants matched the DNA found in the vagina of the deceased. Further detailed information of the DNA matching is attached herewith.

The Court's Ruling

With evidence proving the defendant's guilt beyond any reasonable doubt, the court ruled that the two defendants had committed a heinous crime and sentenced them pursuant to the following provisions of the Penal Code:

Article 276 - Whoever has sexual intercourse with a woman, who is not his wife, against her will, by threatening by any means whatever, by doing any act of violence, by taking advantage of the woman being in the condition of inability to resist, or by causing the woman to mistake him for the other person, shall be punished with imprisonment of four to twenty years and fined eight thousand to forty thousand Baht.

If the offence as mentioned in the first paragraph is committed by carrying or using any gun or explosive, or participation of persons in the nature of destroying the woman, the offender shall be punished with imprisonment of fifteen to twenty years and fined thirty thousand to forty thousand Baht, or imprisonment for life.

Article 297(7) - Whoever commits murder on the other person for the purpose of securing benefit obtained through the other offence, or concealing the other offence or escaping punishment for the other offence committed by him, shall be punished with death.

Thailand: Death in Custody of Yaga Pa-o-mani

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Receipt acknowledged

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a substantive response concerning the death of Yaga Pa-o-mani. The SR would note, however, that the Government has already taken longer than the customary 90 days to respond.

Allegation letter dated 14 August 2007 sent with the Special Rapporteur on the question of torture

We are writing concerning the death of Yaga Pa-o-mani from Banang Sata in Yala. According to the information received:

On 27 June 2007 at 5am Yaga Pa-o-mani was arrested from his home by a large group of soldiers who travelled in 10 army vehicles. Two days later, on 29 June, his dead body was discovered at the Yala Central Hospital. The family was notified by a Bajoh Subdistrict Administrative Officer, who had been contacted by police officers from Banang Sata District Police Station.

An autopsy was performed at the Raman District Hospital, which found injuries to the back and a bullet wound to the left shoulder, in addition to other wounds. The body was bruised on the chest and the skull was fractured (probably caused by a gunshot to the head). The autopsy was performed by Dr. Khunying Pornthip Rojanasunand, forensic scientist from Bangkok, who later testified to the Ad-hoc Committee to Study and Investigate Violence in the Deep South Provinces that Yaga was subjected to ill-treatment before he died.

Police Major Jirasak Wikraicharoenyng, an investigating officer at the Raman District Police Station, reportedly told the local independent news media that Yaga had been shot and killed in an attack by a group of militants during the transport from military custody into police custody.

Without in any way implying any conclusion as to the facts of the case, we would like to recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) to which Thailand is a Party, enshrines the right not to be arbitrarily deprived of one's life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. This means that a State is presumed to be responsible for the death of the person under international law, unless clear evidence to the contrary is forthcoming, explaining how the death occurred. In this respect, I would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermitt Barbato v. Uruguay*, communication no. 84/1981 (1990)): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermitt committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were

responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.”

Concerns about the Emergency Decree in force in Southern Thailand, were expressed in a previous letter to your Government dated 15 November 2005 and subsequent press release. We note that the Human Rights Committee stated that it was “especially concerned that the Decree provides for officials enforcing the state of emergency to be relieved of legal and disciplinary actions, thus exacerbating the problem of impunity” (CCPR/CO/84/THA, para. 13.) We note that the Decree provides that soldiers and police officers may not be prosecuted or disciplined even for otherwise illegal killings so long as they are acting reasonably and in good faith. The decree also allows for persons being detained for up to 30 days without any charge, often outside of conventional detention facilities as they are not considered as formally charged. Further legislative concerns include the fact that Thailand has no law prohibiting torture.

We should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the death of the person named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would also like to draw your Government’s attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, “stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed;”.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the case of Yaga Pa-o-mani. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please indicate whether compensation has been provided to the family of the victim.

Response from the Government of Thailand dated 5 September 2007

By letter dated 5 September 2007 the Government indicated that the official response on the case will be submitted later and provided the Special Rapporteur with a general clarification of the Royal Thai Government on the Executive Decree on Government Administration in Emergency Situations, which was applicable to the present case. The Government reiterated that the Decree did not limit the rights contained in the International Covenant on Civil and Political Rights, that all safeguards required under international law are guaranteed by national legislation and that torture or cruel, inhuman or degrading treatment are prohibited by the Criminal Code.

Thailand: Appointment of an Independent Committee to Investigate Extrajudicial Killings during the “War on Drugs” in 2003

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur looks forward to being provided with information on the progress and outcome of the investigations of the Independent Committee.

Allegation letter dated 28 August 2007

I welcome the reported approval by the Cabinet of the Government of Thailand of an Independent Committee to investigate a significant number of extrajudicial killings during the so-called “crackdowns” on drug users and traffickers beginning in 2003. My predecessor wrote to the previous Government on 25 February, 2003 and on 1 April 2004 raising concerns about the lack of thorough and independent investigations into the killings and into the allegations of the involvement of security forces in a number of cases, without the issues being satisfactorily resolved. I would be grateful therefore to be notified of the outcome of the planned investigations referred to above.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to my attention. I undertake to ensure that your Government’s response is accurately reflected in the report that I will submit to the UN Human Rights Council for its consideration.

Finally, I wish to emphasize that my request for an invitation to visit Thailand is still outstanding and I hope that in light of changed circumstances in Thailand an invitation can now be extended.

United Kingdom: Expulsion of Sajmir Khepmetaj, an Albanian national

Violation alleged: Expulsion, refoulement or return of persons to a country or a place where their lives are in danger

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 28 August 2007

I am writing concerning Mr Sajmir Khepmetaj an Albanian national who I understand was refused refugee status in the United Kingdom and is alleged to be at risk of being killed if he returns to Albania.

According to information I have received, Mr Khepmetaj who is partly of Roma ethnic origin from Komsi near to the town of Burrel is at risk of being killed in the course of a "blood feud". It is my understanding that in 1999 Mr Khepmetaj was kidnapped by the Kola gang and threatened with death unless he provided information on the whereabouts of his cousin, Alfred who belonged to the Dedja gang. This apparently happened against the background of two prior killings of members of the Dedja clan and control exerted by the Kola gang in his town. Mr Khepmetaj's provision of information regarding the location of Alfred apparently led to the latter's killing days later. Subsequently Mr Khepmetaj reported that his father was kidnapped and his brother was threatened with death by the Dedja clan. An attempt on the life of Mr Khepmetaj was made by the Dedja gang using a hand grenade resulting in extensive injuries and hospitalisation to him. Mr Khepmetaj also cited a subsequent bomb attack on the family home leading his family to relocate to the city of Durres. Mr Khepmetaj reported that he was subsequently detained by the police in Durres and assaulted, together with other members of his family. The police enquired what he had done for someone to have bombed his house. In detention Mr Khepmetaj reported seeing Halit Dedja who was said to have worked for the police in the past and have a network of informers.

I note the very limited capacity of police to provide protection in Albania, a problem reported upon by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit in his report on his mission to Albania, 31 October to 7 November 2005 (see E/CN.4/2006/67/Add.2, para 75). The report also finds that members of Roma families easily fall victim of criminal groups in that country (see para, 52).

Because of the way in which I interpret the appropriate limits of my mandate I would not normally write on behalf of someone reportedly at risk if returned. I have decided to do so in the present case, however, because the information available to me seems to give cause for serious concern in terms of protection of the right to life. I would therefore urge Your Excellency's Government to review the matter and not to proceed with the return unless it has satisfied itself that the fears expressed above are not well grounded.

It is my responsibility under the mandate provided to me by the Commission on Human Rights, extended by the Human Rights Council and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to my attention. I undertake to ensure that your Government's response is accurately reflected in the report that I will submit to the UN Human Rights Council for its consideration.

United States of America: Impunity for the Killing of Abed Hamed Mowhoush

Violation alleged: Impunity

Subject(s) of appeal: 1 male (foreign national)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the United States in relation to the killing of Abed Hamed Mowhoush.

Allegation letter dated 22 August 2006

I am writing about the case of Chief Warrant Officer Lewis E. Welshofer Jr., who, according to the information I have received, was found guilty of negligent homicide and negligent dereliction of duty by a jury of six-officers on 21 January 2006 in Colorado. The jury acquitted Chief Welshofer of murder and assault charges. On 24 January 2006, it imposed a sentence that comprised a fine of US\$6,000, confinement to his base and place of worship for two months, and a letter of reprimand.

The charges against Chief Welshofer related to the death of Major General Abed Hamed Mowhoush, an Iraqi general who had turned himself in to military authorities. During an interrogation on 23 November 2003 in Qaim, Iraq, Officer Welshofer forced Maj. Gen. Mowhoush head first into a sleeping bag and sat on his chest. The general, who was fifty-seven years old and weighed two hundred and fifty pounds, died shortly thereafter.

I bring the case to your attention for two reasons. First, I am deeply concerned that the sentence imposed on Chief Welshofer may not be proportionate to the gravity of the offence. Chief Welshofer has clearly been prosecuted and convicted. Nonetheless, I am concerned that his sentence permits United States military personnel to operate with the expectation of a fair degree of impunity when employing life-threatening interrogation techniques. The maximum sentence that Chief Welshofer faced for the offence of negligent homicide was three years imprisonment. The sentence handed down falls so short of the maximum that it would appear to send the message that Chief Welshofer's crime was not a serious one.

The second issue of concern to me is the military's apparent failure to comprehensively investigate either (i) systemic breakdowns that may have contributed to Maj. Gen. Mowhoush's death or (ii) the possibility that Officer

Welshofer's superior officers may have implicitly or expressly sanctioned the interrogation techniques that ultimately proved fatal.

According to the information received, at his trial, Chief Welshofer reportedly testified that he was not adequately trained to conduct interrogations in Iraq prior to his deployment and that he received little guidance about how to conduct interrogations once there. He testified that months before Maj. Gen. Mowhoush's death he had received a memorandum from a senior officer, which said that senior personnel "wanted the gloves to come off" in interrogations and sought "an interrogation techniques wish list" from interrogators. Chief Welshofer also testified that he had received prior approval from Lt. Gen. Ricardo S. Sanchez before escalating the interrogation methods used with Maj. Gen. Mowhoush. The interrogation of this prisoner seems to have been considered of great importance because of his high-ranking position under the previous regime and also because he was thought to be a central figure in the Iraqi insurgency. In the face of this evidence, the failure to investigate the possible responsibility of higher-ranking officials in the death of Maj. Gen. Mowhoush may send an additional message of impunity.

As you are aware, human rights law requires States to effectively investigate, prosecute, and punish individuals responsible for arbitrary deprivations of life (see the International Covenant on Civil and Political Rights, Arts. 2 and 6(1)). Inasmuch as the right to life is non-derogable, these obligations do not cease to apply during armed conflict (see ICCPR, Art. 4). The requirements of the Geneva Conventions are also relevant, because Maj. Gen. Mowhoush was either a prisoner of war or a person detained on suspicion of activities hostile to the security of an occupying power. Under the Geneva Conventions, States must "take measures necessary for the suppression of all acts contrary to [their] provisions" (see Geneva III, Art. 129; Geneva IV, Art. 146). Among other measures, this obligation entails the imposition of "effective penal sanctions" for grave breaches, including "willful killing", "torture or inhuman treatment", and "willfully causing great suffering or serious injury to body or health" (see Geneva III, Arts. 129, 130; Geneva IV, Arts. 146, 147). As discussed above, there is reason to doubt that the penal sanctions imposed on Chief Welshofer will be effective in preventing future violations of these international obligations.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission, I would be grateful for your cooperation and observations on the following matters:

- (i) Are the facts alleged in the above summary of the case accurate?
- (ii) Please provide the text of any final judgment of the court martial in the case of Chief Welshofer.
- (iii) Please provide transcripts of the proceedings in Chief Welshofer's case.
- (iv) Please provide information regarding further investigations that the United States Government might be carrying out in relation to this matter.

Response from the Government of the United States dated 11 April 2008

The Government of the United States of America informed that Chief Warrant Officer Lewis Welshofer, Jr. was convicted at a general court-martial in 2006 of negligent homicide and dereliction of duty for his part in the death of Major General Mowhoush.

Regarding the request for documents related to these proceedings, the Government referred to documents recently released by the Department of the Army in response to a request made under the Freedom of information Act by the American Civil Liberties Union. These documents have been posted at <http://www.aclu.org/natsec/foia/log2.html> (see separate pdf files listed under "Army Bates 10652 - 11421: Parts 1, 2, 3, 4, 5, 6, 7, 8, 9").

Finally the Government informed that there were no further pending investigations into this incident.

United States of America: Killing of Civilians in Nangrahar Province on 4 March 2007

Violation alleged: Violations of the right to life during armed conflict

Subject(s) of appeal: 12 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 9 May 2007

I am writing about an incident that reportedly took place on 4 March 2007 in Nangrahar Province, Afghanistan, in which the United States Marine Corps Special Forces killed 12 civilians. It is my understanding that a Special Forces vehicle convoy travelling along the Torkham to Jalalabad highway was hit by a vehicle borne improvised explosive device (SVBIED) resulting in the deaths of the vehicle driver and at least one injured Marine.

According to information that I have received:

Following the attack, US Forces repeatedly shot at vehicles and pedestrians at the site of the attack, as well as at different locations along the next 16km of road. It is my understanding that a US Forces Military Spokesperson stated to the media on the 5 March 2007 that the suicide attack may have been part of a complex ambush in which the convoy came under small arms fire immediately after the explosion, although, according to information that I have received,

witnesses and Government officials denied that any attack beyond the initial explosion took place. These witnesses stated that several vehicles including taxis, minibuses, and a coaster bus as well as a number of pedestrians and bystanders came under attack by the American convoy in at least six different locations. My understanding is that the Afghan National Police stated that after the incident international forces returned to the site and were involved in a comprehensive clean up operation, collecting all shells, magazines and cartridges from the area.

It is my understanding that a media release of the Combined Forces Special Operations Component Command, US Central Command (CFSOCC) dated 11 April, 2007 announced the completion of its investigation into the 4 March incident and that “the investigation revealed the actions taken by some of the special operators in the Convoy following the SVBIED attack appear to warrant a further enquiry by the Naval Criminal Investigation Service (NCIS). Accordingly this matter is referred to NCIS for appropriate action”.

Without in any way wishing to pre-judge the accuracy of the information received, it is my responsibility under the mandate provided to me by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Is the information according to which United States forces killed 12 civilians in Afghanistan on 4 March, 2007 accurate?
2. Does your Excellency’s Government intend to provide compensation to the families of the civilians killed above? If so, what steps have been taken in this direction?
3. Kindly provide a copy of the investigation(s) carried out by the United States Military into the above incident. In particular, I would request information relevant to the determination of whether each decision to resort to lethal force complied with the applicable international law.
4. Kindly provide details of any disciplinary action or criminal proceedings against those soldiers found to be responsible.

United States of America: Impunity for killings by members of the armed forces

Violation alleged: Violations of the right to life during armed conflict; Impunity

Subject(s) of appeal: 4 males, 1 unknown sex

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 23 May 2007

I have received information regarding a number of incidents in which there would appear to be significant evidence that members of the armed forces committed such crimes as murder and manslaughter in violation of provisions of the United States' Uniform Code of Military Justice (UCMJ). The crimes would, of course, also constitute violations of international human rights and humanitarian law. However, the information that I have received suggests that these cases were not submitted to court martial.

There are five such incidents that I would like to raise with your Government:

1. According to information that I have received, the United States Army Criminal Investigation Command (CID) investigated an Iraqi death occurring on or about 19 June 2003, in which "a US army soldier fatally shot an Iraqi national at the Safwan Bypass, Safwan, Iraq. Investigation established probable cause to believe SPC [omitted] committed the offense of ... Voluntary Manslaughter when he disregarded the standing rules of engagement and intentionally shot and killed Mr. Mattar for stealing a box of MRE's." (Army CID Report of 8 September 2003, No. 0181-03-CID519-62190-5H1R/5H2/5Y2B9/9G2B/9G2C.) It is my further understanding that the CID report concluded: "This investigation is being terminated ... in that the action commander has indicated intent to take no action against the subject and no further investigative assistance is required by the commander." The information that I have received suggests that no court martial took place in relation to this incident, despite the finding by Army CID that voluntary manslaughter had been committed.
2. According to information that I have received, CID investigated a killing which occurred on 2 June 2003 in LSA Dogwood, Iraq. (Army CID Report of 4 August 2003, No. 0017-03-CID939-63985-5H3A/5Y2B0.) The extensive investigation, which included 46 attached exhibits, "established probable cause to believe that 1Lt [omitted] committed the offense of Involuntary Manslaughter ... when 1LT [omitted] gave an unlawful order to SGT [omitted] 105th MP CO, to shoot the tires out of a fleeing vehicle, which violated the rules of engagement (ROE), a lawful order which 1LT [omitted] had a duty to obey, and resulted in the unlawful death of Mr. Hamza." The report concluded that "the Staff Judge Advocate is of the opinion that significant admissible evidence is available to prosecute 1LT [omitted] for the offense[] of Involuntary Manslaughter". Nevertheless, a Commander's Report dated 10 September 2004 that I have received states that the involuntary manslaughter charge was dropped because "[a]lthough an unfortunate incident, 1LT [omitted] clearly had no intent to injure the fleeing Iraqi criminals."
3. According to information that I have received, CID investigated a homicide which occurred on 12 August 2003 near Ad-Diwaniyah, Iraq in which "the

victim and numerous other local nationals were attempting to sell items to members of a convoy. ... [and] 1LT [omitted], SSG [omitted], and SSG [omitted] while performing their duties as the roving patrol for CSC Scania chased away the victim and other local nationals, who fled on foot, east from the MSR. SSG [omission] began pursuing the victim on foot after the victim threw a rock just missing him. 1LT [omission] assisted in the pursuit and, after cornering the victim, told the victim to stop, using both verbal commands and hand signals. The victim picked up a baseball-sized rock and threw it at 1LT [omitted], missing him. 1Lt [omitted] then again commanded the victim to stop and come to him. The victim picked up another baseball-sized rock and threw it at 1LT [omitted]. 1LT [omitted] ducked out of the way, stood back up and pulled the charging handle of his m4 loading a round into the chamber, in full view of the victim. The victim then picked up another baseball size rock and was attempting to throw it at 1LT [omitted] when he fired one (1) round from his M4 rifle, striking the victim in his left shoulder.” (Army CID Report of 25 September 2003, No. 0070-03-CID939-64002-5H6.) The case was closed because “the Staff Judge Advocate is of the opinion the shooting was a justifiable homicide and it is clear that no criminal act was involved.”

4. According to information that I have received, CID investigated a homicide that occurred on 17 August 2003 outside of Abu Gharib prison, in which “a soldier accidentally shot and killed a reporter from Reuters News Agency.” (CID Report of 20 January, 2004, No. 0143-03-CID259-61191-5H9C2.) It is my further understanding that the reporter, Palestinian journalist Mazen Dana, was filming outside the prison after having received a proper press permit from U.S. authorities. According to the CID report which I have reviewed, the soldier fired at Dana because “he believed Mr. Dana was a hostile combatant when he raised an unknown device to his shoulder, holding it with both hands. The soldier thought the device was a Rocket Propelled Grenade (RPG) Launcher, but it was later determined to be a news agency videocamera.” The report concluded that the incident was therefore an “accidental death”, and the soldier was thus not prosecuted for any crime.
5. According to information that I have received, video footage by journalist Kevin Sites appears to depict a marine killing an unarmed and wounded Iraqi man in a Mosque at point blank range on 13 November 2004. In the video footage, one Marine can be heard yelling “He’s fucking faking he’s dead! He’s faking he’s fucking dead!” The Marine then fires directly at the apparently wounded man several times. Immediately following the shooting, another Marine can be heard stating “He’s dead now.” My understanding is that the Marine was investigated but not prosecuted.

While I do not wish to prejudge the accuracy of these allegations, I would note that, if they were accurate they might give rise to concern about the extent to which your Government is consistently imposing effective penal sanctions for grave breaches of the Geneva Conventions and, more generally, consistently prosecuting and punishing the unlawful use of lethal force. (For further discussion of the law in this area, see E/CN.4/2006/53, paras. 33–43.)

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. For each of the incidents raised above, are the facts alleged in the case summary accurate?
2. For each of the incidents raised above, please provide information on any criminal, disciplinary, or administrative sanctions that were imposed.
3. For each of the incidents raised above, has your Government provided compensation to the victim's family?
4. With respect to the incidents occurring on 2 June 2003 and on or about 19 June 2003, why was no prosecution conducted despite the investigator's conclusion that the evidence indicated that crimes of involuntary manslaughter or voluntary manslaughter, respectively, had been committed? Was there any process to review decisions by commanders not to convene courts martial?
5. With respect to the incidents that occurred on 12 August 2003, 17 August 2003, and 13 November 2004, what was the legal basis for concluding that no crimes had been committed? Please provide information on any measures your Government took to prevent the recurrence of similar incidents.
6. Does your Government collect information on the initial disposition of offenses following a commander's preliminary inquiry into allegations? If so, please provide data on how many allegations of murder or manslaughter result in no action being taken, administrative action, non-judicial punishment, or the convening of a court martial. Similarly, please provide data on the kinds of courts martial — summary, special, and general — that have been established in such cases.

United States of America: Killing of Civilians following Air Strikes in Afghanistan

Violation alleged: Violations of the right to life during armed conflict

Subject(s) of appeal: Over 78 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 28 June 2007

I am writing concerning information I have received about a series of recent incidents in which civilians are reported to have been killed in Afghanistan in the course of United States air strikes. According to information I have received:

On 18 June, 2007 seven children were killed in a US led Coalition air strike in Zarghun Shah, Paktika Province, Afghanistan. It was reported that the children were students at a madrassa situated in the targeted compound which also included a mosque. Reported Coalition statements include that “Coalition Forces confirmed the presence of nefarious activity occurring at the site before getting approval to conduct an air strike on the location” and later that the Coalition did not believe any children were in or around the compound during the day.

According to information I have received: 21 civilians were killed by US led forces in an air strike on 9 May, 2007 in Sangin District, Helmand Province. It is my understanding that US led forces were ambushed by Taleban forces on 8 May, 2007 25km north of Sangin town killing one soldier and in response, air strikes were made on three villages killing a number of persons. It was reported that a US military spokesperson Major William Mitchell confirmed military operations in the area, but denied that he had received reports of civilian casualties.

According to information I have received, over fifty civilians were killed during the week beginning 30 April, 2007 in Shindand district, Herat Province in the course of land and air strikes conducted by US led forces. My understanding is that whilst UN and Afghan police reported the above civilian deaths, US led forces reported that they had killed 136 combatants and were unaware of any civilian deaths.

Without in any way wishing to pre-judge the accuracy of the information received, it is my responsibility under the mandate provided to me by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Is the information according to which United States led forces killed 78 civilians in Afghanistan in the above three specified incidents accurate ?
2. Does your Excellency’s Government intend to provide compensation to the families of the civilians killed above? If so, what steps have been taken in this direction?
3. Kindly provide a copy of the investigation(s) carried out into the above incidents. I am particularly interested in information related to two issues. First, how was it determined whether each decision to resort to lethal force complied with the applicable international law? Second, how was it determined whether the persons killed were civilians or combatants?

4. Kindly provide details of any disciplinary action or criminal proceedings against those soldiers found to be responsible.

United States of America: Death in Custody of Ahmed Ali Abdullah, a.k.a. Salah Addin Ali Ahmed Al-Salami

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 28 June 2007

I would like to bring the attention of your Excellency's Government information I have received regarding the death in custody of Mr Ahmed Ali Abdullah, named Salah Addin Ali Ahmed Al-Salami in other reports, at the Guantánamo Bay detention facility on 10 June 2006.

According to the information I have received:

Mr. Abdullah was a citizen of Yemen detained at the Guantánamo Bay detention camp since 2002. He died there on 10 June 2006, on the same day as two other detainees of Saudi citizenship, Messrs. Yassir Talal Az-Zahrani and Mani' Shaman Al-Utaybi. Your Excellency's Government explained that the three men had committed suicide by hanging themselves in their cells. A medical team directed by Dr. Craig T. Mallak, Armed Forces Medical Examiner, carried out an autopsy. A few days after the incident, the bodies of the three men were transported back to their respective home countries.

Refusing to accept your Government's statement that Mr. Abdullah had committed suicide, his family asked a Geneva-based non governmental organisation, Alkarama for Human Rights, to assist with organising an autopsy. Alkarama gave a mandate to this effect to a medical team headed by Prof. Patrice Mangin, director of the Institut de Médecine légale of Lausanne University in Switzerland. This autopsy was carried out at the military hospital of Sanaa and was followed by further laboratory analysis at the Institut in Lausanne on samples taken from Mr. Abdullah's body.

By letter to Dr. Mallak, the Armed Forces Medical Examiner, dated 29 June 2006 and sent to the US Embassy in Bern with a request to forward it to the addressee, Alkarama expresses the wish "to put you [Dr. Mallak] in touch with the Lausanne medical team which needs some documents, materials and explanations from your side in order for them to formalize their report of

autopsy". The letter then sets forth some specific requests, in particular a copy of the autopsy report of the US Armed Forces Medical Examiner and a copy of the report of the investigation carried out by the authorities of the detention facility into the death, including information on the circumstances of the discovery of the deceased, on the ligatures he used to hang himself, on reanimation attempts, on the reasons all the finger and toe nails were cut, on his psychological state in the days preceding his death, as well as on previous suicide attempts by Mr. Abdullah. Neither your Excellency's Government nor Dr. Mallak ever replied to this request.

On 20 July 2006, Prof. Mangin transmitted his team's autopsy report to Alkarama. The conclusions of the report, insofar as relevant to the present letter, are:

- 1) That Mr. Abdullah's death was most probably caused by asphyxiation through violence against the neck due to hanging, although other dynamics could not be formally excluded;
- 2) That it should be possible to explain the traces of puncture/injection with bleeding into the skin and the dental trauma found on the body as consequences of attempts to reanimate Mr. Abdullah. If that was not the case, they would constitute elements of suspicion with regard to the cause of death;
- 3) That at the current state of the medical team's investigation (and subject to (2) above), the findings are not incompatible with suicide by hanging.

As your Excellency's Government will know, the family of Mr. Abdullah and others have raised doubts as to whether he really did commit suicide. In support of their doubts they argue that:

- 1) according to co-detainees, Mr. Abdullah (as well as Messrs. Yassir Talal Az-Zahrani and Mani' Shaman Al-Utaybi) was in good spirits in the days preceding his death;
- 2) as a person known to follow strictly the precepts of Islam, he would never have committed suicide;
- 3) the tight surveillance of the cells, with permanent video-surveillance and guards passing in front of each cell every two to five minutes, would make a suicide by hanging impossible in the absence of collusion by the guards; and
- 4) it is materially impossible for a detainee to hang himself in the cell, as there is (again according to reports of other former detainees) absolutely no place a detainee could fix the ligature used to hang himself.

The suspicions harboured by Mr. Abdullah's family have been reinforced by the reported refusal of your Excellency's Government to share the results of its investigation into the death with a US-based law firm retained by them or with any of the other entities who have requested information (including Prof. Mangin and a renowned US-based non-governmental organisation).

Notwithstanding these arguments, I do not at present have reason to doubt your Government's assertion that Mr. Abdullah's death was due to suicide. I would like,

however, to draw your Government's attention to a fundamental principle applicable under international law to this case: When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, I would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraphe 9.2):

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. I would like to add that even the most “thorough, prompt and impartial investigation” of a custodial death will not satisfy your Excellency's Government's obligations under international law if its results are not shared with the family of the victim and subjected to public scrutiny.

I therefore urge your Excellency's Government to respond positively and exhaustively to the requests for information and copies of reports or other documents regarding your Government's investigation into the death of Mr. Abdullah, particularly so when these requests are made by persons acting with due authorization on behalf of his family.

It is my responsibility under the mandate provided to me by the Commission on Human Rights, extended by the Human Rights Council and reinforced by the appropriate resolutions of the General Assembly to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful if you could also share with me copies of all the clarification and documents you will provide to Mr. Abdullah's family through their US lawyers (Dickstein Shapiro LLP), Prof. Mangin or Alkarama.

United States of America: Death Sentence of Troy A. Davis

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 16 July 2007

I am writing concerning Troy a. Davis who has been sentenced to death and is reportedly scheduled to be executed on 17 July, 2007. Mr Davis was sentenced to death in 1991 for the August 1989 killing of Mark Allen McPhail a security officer (and off duty police officer) in Savannah, Georgia. It is my understanding that the case against Mr Davis consisted entirely of witness testimony.

According to information I have received:

Seven out of nine non-police witnesses have recanted or changed their testimony subsequent to the conviction. Several of the witnesses who recanted referred in affidavits to coercive police investigative techniques which they claim forced them to implicate and testify against Mr Davis. In September 2006, however, the US Court of Appeals for the 11th Circuit upheld a ruling by a Federal Judge who had denied a hearing to present post-conviction evidence. On 25 June 2007 the US Supreme Court refused to intervene.

According to information I have received trial counsel failed to conduct an adequate investigation of the state's evidence, including allegations that some witnesses had been coerced by the police, or had been prevented from presenting full and effective witness testimony of their own. Mr Davis has had at least five different lawyers over the years, one of whom was reportedly disbarred, and another of whom failed to communicate with his client or the client's family. In 1995 the US Congress eliminated federal funding for the post-conviction defender organizations (PCDOs) which it had established in 1988 to provide legal assistance to indigent death row prisoners. One such PCDO, the Georgia Resource Center, which was representing Mr Davis, had its budget reduced by two thirds and the number of lawyers on its staff reduced from eight to two. A lawyer working on Troy Davis' case stated in an affidavit that "I desperately tried to represent Mr Davis during this period, but the lack of adequate resources and the numerous intervening crises made that impossible... We were simply trying to avert total disaster rather than provide any kind of active or effective representation".

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. It is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. The death penalty may only be imposed when the guilt of the person charged is based upon clear and convincing evidence

leaving no room for an alternative explanation of the facts, according to the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty.

When an accused is represented by assigned counsel, the authorities must ensure that the lawyer assigned has the experience and competence commensurate with the nature of the offence of which their client is accused, Principle 6 of the Basic Principles on the Role of Lawyers. The authorities have a special duty to take measures to ensure that the accused is effectively represented (*Kelly v. Jamaica* (253/1987), 8 April 1991, Report of the HRC, (A/46/40), 1991, at 248, para. 5.10). If the appointed counsel is not effective, the authorities must ensure that counsel performs their duties or is replaced (*Artico Case*, 13 May 1980, 37 Ser. A 16.]. The Human Rights Committee noted concerns about "the lack of effective measures in the United States to ensure that indigent defendants in serious criminal proceedings, particularly in state courts, are represented by competent counsel". (Comments of the HRC: USA, UN Doc. CCPR/C/79/Add.50, 7 April 1995, para.23). In his 1998 report on the USA, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern that "the absence of PCDOs creates a grave difficulty for defendants at the post-conviction level", (E/CN.4/198/68/Add.3, para. 99). In the present case there are grounds for concern that poor legal representation afforded to Mr Davis since 1989 has denied him both the right to a fair trial and the right to effectively appeal against conviction and the death sentence.

Article 14(5) ICCPR provides "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." This requires that a review by a higher court must be a genuine review of the issues in the case. In the context of Mr Davis' case the refusal by the courts to grant a rehearing when presented with significant new evidence which casts doubt on the initial conviction, appears to amount to a denial of the right to a genuine review as required.

In light of these serious and pressing concerns, based upon human rights norms recognized by the international community, I would respectfully request Your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. I urge your Excellency's Government to put Mr Davis execution on hold in light of the above facts with a view to commuting his death sentence.

In closing I wish to emphasize two points. The first is that, despite receiving a significant number of complaints in relation to the carrying out of the death sentence in the United States, I have only rarely acted on these complaints. In this instance I firmly believe that the case merits this urgent appeal and warrants immediate action on the part of the U.S. Government. The second is that I take no position either for or against the death penalty but act only when it seems clear that the risk of injustice is such that internationally accepted standards will be violated in the absence of urgent intervention by the Government.

Uzbekistan: Death Sentence of Ismatillo Abasov

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur notes the information provided by the Government of Uzbekistan in relation to the death sentence of Ismatillo Abasov. The SR remains concerned that Ismatillo Abasov has been sentenced to death despite the apparent absence of an effective investigation into allegations that his confessions were extracted with torture.

Urgent appeal dated 23 January 2006 sent with the Special Rapporteur on the question of torture

We would like to bring to the attention of your Excellency's Government the situation of Mr. **Ismatillo Abasov**, who appears to be at risk of imminent execution. According to the information received:

Mr. Ismatillo Abasov was sentenced to death by the Tashkent City court on 31 January 2005 for "premeditated, aggravated murder". Mr. Abasov has exhausted all judicial remedies. Reportedly, his conviction and sentence are based on confessions extorted under torture or other forms of ill-treatment. Mr. Abasov has submitted a communication to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (ICCPR). The Committee has requested your Excellency's Government not to execute Mr. Abasov while his case is under consideration by the Committee.

While we are fully aware of the serious nature of the crime Mr. Abasov has been found guilty of, we respectfully remind your Excellency's that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights admits no exception admits" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right not to be compelled to confess guilt.

We also recall that Commission on Human rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture, shall not be invoked in any proceedings. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Mr. Abasov are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the death

sentence against Mr. Abasov until the allegation of torture have been thoroughly investigated and all doubts in this respect dispelled. Finally, international law requires that the accountability of any person guilty of subjecting Mr. Abasov to torture is ensured.

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

1. Are the facts alleged in the above summaries of this case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations and judicial or other inquiries carried out in relation to the allegations that Ismatillo Abasov was subjected to torture while in pre-trial detention. If no inquiries have taken place or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken with regard to the alleged torture of Ismatillo Abasov. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

Response from the Government of Uzbekistan dated 26 January 2007

Abasov Ismatillo Asadullaevich, born 1959, two previous convictions, was found guilty by Tashkent city court on 31 January 2005 of offences under articles 97, part 2, paragraphs (i), (p) and (q) (Premeditated killing), 248, part 2 (Unlawful possession of weapons, ammunition, explosive substances or explosive devices) and 59 (Sentencing for multiple offences) of the Criminal Code of Uzbekistan.

On 12 April 2005, the appeals chamber of Tashkent city criminal court modified the Tashkent city court ruling of 31 January 2005, deleting the reference to article 97, part 2, paragraph (q), while the remainder of the judgement was left unchanged.

By decision of the court Abasov I. was found guilty of the following offences.

For the purpose of obtaining the sum of 5,000 United States dollars by force from Shapiro I., Abasov I. entered into a criminal conspiracy with Dzhumaev N. and Radzhapov A. In order to carry out their criminal plan, following the instructions of the criminal group's leader, Dzhumaev N., Abasov I. and Radzhapov A. carried out surveillance of Shapiro I. from 16 to 24 August 2004.

On 24 August 2004, after arming himself with a Nagan pistol and two RGD 5 grenades, Abasov I. attacked Shapiro I. as he was reaching his home and carried out a premeditated killing. The criminal was caught by militia officers as he was trying to leave the scene of the crime. The Nagan pistol and the RGD-5 grenades were taken away as material evidence.

The following assertions by the author of the letter cannot be accepted:

- That the court failed to confirm that Abasov I. committed the offence as part of a criminal group;
- That militia officers exerted physical and psychological pressure on the accused;
- That Abasov I. was unjustifiably charged under article 97, part 2, paragraph (i) of the Criminal Code.

Aside from the defendant's own confessions, his guilt is also confirmed by the testimony of Akhmedov S., Yuldashev B., Turgunov M., Ruzmetov E., Tursunkhodzhaev K., Fetisov A., Bakhrarov K. and the aggrieved party Oleinikov V., the findings of the forensic medical, ballistic and psychiatric experts, the records of checks of the scene of the crime and of the material evidence removed, records of identification and other case materials.

On 26 October 2004 the Tashkent procurator's office declared the members of the criminal group Dzhumaev N. and Radzhapov A. wanted by the police as their whereabouts had not been ascertained. Currently the law enforcement agencies are working to determine the whereabouts of these persons and bring them to justice.

The case materials do not contain any evidence that the accused were subjected to any forms of unlawful treatment before or during the investigation. All the procedural measures were taken in accordance with the provisions of legislation concerning criminal procedure. All the lawful rights of the accused were assured, and specifically the services of a lawyer. Before and during questioning as part of the investigation, in the presence of his lawyer, he confirmed that he had given evidence of his own free will without any coercion on the part of the investigators. During court proceedings Abasov I. made no mention of the use of unlawful methods against him.

Since the close relatives of the victim - his wife Shapiro T. and his son Shapiro R. - are living in Almaty, Kazakhstan, the procurator's office decided with their consent to grant the status of aggrieved party in the case to Oleinikov V.

As can be seen from the above, the investigations and judicial proceedings were conducted strictly in accordance with the applicable legislation. Abasov I.'s criminal acts were correctly evaluated by the court.

Despite two previous convictions, Abasov I. did not draw the appropriate conclusions and continued to pursue a lifestyle which posed a major danger to society. The court, judging the re-education of Abasov I. impossible, and taking into account the absolute danger his personality posed to society, decided to impose the supreme punishment - the death penalty.

Venezuela (Bolivarian Republic of): Amenazas de Muerte contra Tres Jóvenes en Caracas

Violación alegada: Amenazas de muerte

Persona objeto del llamamiento: 3 hombres (2 menores)

Carácter de la respuesta: Respuesta cooperativa pero incompleta

Observaciones del Relator Especial

El Relator Especial aprecia que el Gobierno de la República Bolivariana de Venezuela por la información adicional que ha proporcionado relativa al estado de sus investigaciones con relación a las amenazas de muerte. El Relator Especial también aprecia el compromiso del Gobierno de mantenerlo informado sobre el progreso de dichas investigaciones.

El Relator Especial lamenta que el Gobierno no haya proporcionado información sobre las medidas de protección adoptadas para garantizar la seguridad de Edison Steeven Gámez Cabrera, José Manuel Silva Díaz y Eduardo Antonio Moro.

Llamamiento urgente del 1 de septiembre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido en relación con los actos de intimidación y las amenazas de muerte en contra de los jóvenes Edison Steeven Gámez Cabrera (18 años), José Manuel Silva Díaz (14 años), y Eduardo Antonio Moro (17 años), por parte de un funcionario de la Policía de Circulación de Miranda y de otro funcionario uniformado de la policía Metropolitana, en el barrio La Cruz, de la ciudad de Caracas, Venezuela. Según la información recibida:

El 17 de julio de 2006, Edison Steeven Gámez Cabrera se encontraba en frente del negocio y residencia de la Sra. Eglé Díaz, ubicado en el barrio La Cruz, cuando un funcionario de la Policía de Circulación de Miranda, que vestía de civil y se desplazaba en una moto de placa N° 4-18, lo habría amenazado con arrestarlo por haber presuntamente robado unos zapatos y una pelota que se encontraban en su casa. José Manuel Silva Díaz, hijo de la Sra. Eglé Díaz, se habría acercado al escuchar las amenazas. En ese momento, el funcionario de la policía se habría dirigido a José Manuel y a Eduardo Antonio Moro, otro joven que se encontraba allí, diciéndoles que a ellos también los iba a desaparecer y a ajusticiar. Desde entonces, este funcionario de la Policía de Circulación de Miranda, que reside también en el barrio La Cruz, habría continuado amenazando de muerte a estos jóvenes, así como preguntado a los vecinos sobre los lugares que los jóvenes frecuentan y los horarios en los que suelen salir. Según nuestras fuentes, este funcionario también pasaría frente al negocio y residencia de Sra. Eglé Díaz, junto a otro funcionario uniformado de la policía Metropolitana, y señalaría la casa con gestos amenazantes. De acuerdo con la información recibida, el 27 de julio del 2004, la Sra. Eglé Díaz denunció este hecho ante la oficina de Atención a la Víctima del Ministerio Público, pero el funcionario público a cargo habría manifestado que el Ministerio Público no tenía competencia para recibir denuncias sobre amenazas a la seguridad personal. Igualmente, se habrían realizado denuncias ante la división de asuntos internos de la Policía de Circulación de Miranda y de la Policía Metropolitana, no obstante ninguna investigación habría sido iniciada.

Frente a estas alegaciones, expreso mi temor por la seguridad de las personas anteriormente mencionadas, e insto al Gobierno de su Excelencia a tomar de inmediato las medidas necesarias para garantizar la seguridad e integridad física y psicológica de José Manuel Silva Díaz, Steeven Gómez Cabrera y Eduardo Antonio Moro. A este respecto, llamo la atención de su Gobierno sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y en el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

Igualmente, me permito llamar su atención sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. Los principios 4 y 9 a 19 obligan a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte. Los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

De acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos, mandato reforzado por las resoluciones pertinentes de la Asamblea General, es mi responsabilidad intentar conseguir clarificación sobre los hechos llevados a mi atención. En mi deber de informar sobre esos casos al Consejo de Derechos Humanos, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos referidos?
2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?
3. Por favor, proporcione los detalles así como los resultados de las últimas diligencias judiciales o de otro tipo, realizadas en relación a este caso. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?
4. Indicar las acciones adoptadas para garantizar la seguridad de José Manuel Silva Díaz, Steeven Gómez Cabrera y Eduardo Antonio Moro.

Respuesta del gobierno de Venezuela del 12 de julio de 2007

Los ciudadanos arriba mencionados, todos adolescentes, fueron testigos de actos de violencia contra las personas, supuestamente cometidos por funcionarios adscritos a la Policía de Circulación del estado Miranda el 17 de julio de 2006, en el Barrio La Cruz, calle La Línea, casa N° 16, de Petare, por lo que presuntamente recibieron amenazas por parte de tales funcionarios.

El caso es conocido actualmente por las Fiscales Octogésima Sexta y Centésima Primera del Ministerio Público de la Circunscripción Judicial del Área Metropolitana de Caracas, abogadas Lisbeth Brandt Lamus y Adriana Gamez, quienes iniciaron las investigaciones en fecha 17 de julio de 2006, realizando las diligencias pertinentes, a los fines de establecer las responsabilidades a que haya lugar, entre las cuales cabe destacar: citaciones libradas para que las adolescentes en cuestión comparezcan a la sede del Despacho Fiscal, a fin que rindan declaración con relación a los hechos. Igualmente se solicitó colaboración a la Red de Apoyo para la Justicia y la Paz, para la localización de los mismos.

Es importante indicar que la causa se encuentra en fase de investigación, razón por la cual quedo a su disposición de presentar mayor información una vez sea recibida.

Venezuela (Bolivarian Republic of): Amenazas de muerte contra la familia de Hernández Mota

Violación alegada: Amenazas de muerte y temor por la seguridad

Persona objeto del llamamiento: 1 mujer, 2 hombres

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de la República Bolivariana de Venezuela Colombia por la información adicional que ha proporcionado relativa a las medidas de protección adoptadas por el Gobierno.

El Relator Especial preguntará información sobre los resultados de las investigaciones mencionadas en la respuesta del Gobierno.

Carta de seguimiento del 17 de octubre de 2006 relativa a una carta mandada el 31 de mayo de 2005

Me gustaría llamar la atención de su Excelencia sobre nuestro intercambio de correspondencia (consignado en mi último informe al Consejo de Derechos Humanos E/CN.4/2006/53/Add.1 p. 299-301) con relación a las amenazas de muerte y los actos de intimidación en contra de Carmen Alicia Mota Hernández, Roberto Carlos Hernández Mota y Carlos Arturo Hernandez Mota. En su respuesta del 3 de Noviembre de 2005, el Gobierno de su Excelencia me informó que el Juzgado segundo en función de control del circuito judicial penal del Estado Guárico, había otorgado medidas de protección a favor de las personas arriba mencionadas. Sin embargo, en esta misma carta, se me informó que las medidas de protección decretadas por este órgano jurisdiccional aun no habían sido implementadas.

En este contexto, y como lo señalé en las observaciones que hice sobre este caso en mi informe, le agradecería al Gobierno de su Excelencia que me proporcione información reciente con relación al cumplimiento de las medidas de protección referidas en su respuesta. Igualmente, agradecería que se me proporcione información reciente con relación al proceso penal que se lleva a cabo con ocasión del homicidio

del Sr. Carlos Arturo Hernandez Ortega (esposo y padre de las personas arriba mencionadas), así como del cumplimiento de las decisiones que se deriven del mismo.

Respuesta del Gobierno de Venezuela del 30 de marzo de 2007

En relación al proceso penal sobre el homicidio del ciudadano Carlos Arturo Hernández Ortega, el Ministerio Público se encuentra en "Fase de Juicio" ante el Tribunal Sexto de Primera Instancia en Funciones de Juicio del Circuito Judicial Penal del estado Carabobo, el cual fijó para el pasado 5 de febrero la celebración de una audiencia oral y pública, en contra de los acusados Wilfredo Rafael Febres, Juan Ramón Rivas Lara, Enrique Ledezma Ruiz, Evin Rafael Quiche y Adolfo León Delgado por la comisión del delito de homicidio intencional calificado.

En lo que respecta a la providencia dictada por el Juzgado Segundo en Funciones de Control del Circuito Judicial Penal del estado Guarico, con sede en Valle de Pascua, previa consulta con el órgano designado por el Tribunal para cumplir la tutela a favor de la ciudadana Mota y su familia, se conoció que las medidas de protección se han venido cumpliendo, como consta en los registros que a tal efecto realiza el cuerpo de seguridad, a saber miembros de la zona 2 de la policía del estado Guarico.

Respuesta del Gobierno de Venezuela del 11 de julio de 2007

La causa se encuentra en fase de Juicio por ante el Tribunal Sexto de Primera Instancia en Funciones de Juicio del Circuito Judicial Penal del estado Carabobo, el cual fijó para el día 28 de marzo de 2007, la celebración de una audiencia oral y pública, en contra de los acusados, a saber, Wilfredo Febres, Juan Ribas Lara, Luis Enrique Ledezma Ruiz, Evin Rafael Quiche y Adolfo León Delgado, por la comisión del delito de homicidio intencional calificado, en perjuicio del ciudadano Arturo Heméndez, siendo finalmente iniciada la referida audiencia el 19 de junio de 2007, en la cual se evacuaron las declaraciones de dos testigos promovidos por el Ministerio Público, encontrándose fijada la continuación de la misma para el día 29 de junio de 2007.

Los Fiscales comisionados, interpusieron igualmente un Recurso de Apelación contra la decisión del 26 de febrero de 2007, emitida por el Órgano Jurisdiccional antes mencionado, mediante la cual se les otorgó Medida Cautelar Sustitutiva de Libertad a todos los acusados, previa solicitud interpuesta por los abogados defensores privados de los ciudadanos Febres y Ribas Lara, siendo esta revocada al Sr. Wilfredo Rafael Febres el día 06 de junio del año en curso, en virtud de haber incumplido con las obligaciones de presentar con periodicidad mensual, los informes médicos que indiquen la evolución o involución de la patología de la que argumenta adolece, toda vez que la providencia fue acordada como medida humanitaria por presentar un cuadro de salud delicado.

Paralelamente al proceso judicial, se mantienen en plena vigencia las medidas de protección acordadas a la Sra. Mota y su familia, por parte de la Policía del estado Guarico en Valle de la Pascua, para garantizarla integridad física de la misma".

Respuesta del Gobierno de Venezuela del 10 de octubre de 2007

En relación a este caso originado con ocasión a la muerte del esposo de la ciudadana Carmen Alicia Mota, quien en vida respondiera al nombre de Arturo Hernández, la Dirección General de Derechos Fundamentales de la Fiscalía General de la República informa que la causa se encuentra en Fase de Juicio del Circuito Judicial Penal del Estado Carabobo, el mismo fue iniciado en fecha 06 de junio de 2007, siendo objeto de varias suspensiones y diferimientos; finalmente el 01 de agosto de 2007, en la oportunidad de la continuación del Juicio Oral y Público, la Juez de la causa, se inhibió de conocer, alegando tener amistad manifiesta con uno de los defensores de los imputados, en la actualidad nos encontramos a la espera del nombramiento del nuevo Juez que conocerá del expediente.

Viet Nam: Death Sentences of Le Manh Luong, Tran Van Hoi, Nguyen Minh Tuan and Nguyen Van Can

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 4 males

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur notes the information provided by the Government of Viet Nam.

The Special Rapporteur remains concerned that, *inter alia*, Le Manh Luong, Tran Van Hoi, Nguyen Minh Tuan and Nguyen Van Can are facing the death penalty for crimes which according to international human rights law do not fall within the category of “most serious crimes” for which the death penalty is admissible.

Urgent appeal dated 11 May 2007 sent with the Special Rapporteur on the question of torture

We are writing concerning **Le Manh Luong, Tran Van Hoi, Nguyen Minh Tuan and Nguyen Van Can** who, we understand, are at imminent risk of execution. According to the information we received:

They were arrested in 2004 (along with three others), tried and convicted of trafficking in heroin, illegally buying and selling a pistol and bullets and forgery of identity documents. They were sentenced to death by the People’s Court, Quang Binh Province on 25 November 2006. Mr Luong, Mr Tuan and Mr Can appealed to the People’s Supreme Court of Vietnam in hearings that took place on 5 and 6 April 2007, and the Court upheld the sentences. It is understood that applications for clemency were submitted to President Nguyen Minh Triet.

It is furthermore our understanding that Mr Luong currently suffers from a mental disorder. On 29 August 1967 when Mr Luong was six years of age a B-52 bomber dropped a bomb on his family’s house killing two of his

brothers and causing him serious brain injury. Mr Luong's defence lawyer submitted medical evidence to the Court which states that Mr Luong had received a significant trauma to the head and that he was diagnosed as having "unstable emotional disorder" or asthenia. Dr Kennedy, a British consultant psychiatrist who has analysed the findings of the Vietnamese Doctors wrote that there "is evidence from the doctors who examined him in Vietnam that in March 2006 the defendant was suffering from psychiatric problems related to a structural problem in his brain". Dr Kennedy has concluded that Luong's brain damage would be seen as a mitigating factor for sentencing in Britain.

We also understand that the above four men are shackled at the ankles and the wrists twenty four hours a day, at the custody centre for the police, where they are currently detained. It is our understanding that such shackling normally continues until the time of execution.

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Secondly, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences.

The limitation of the death penalty to the "most serious crimes": Pursuant to the Article 6(2) International Covenant of Civil and Political Rights ("ICCPR"), ratified by Vietnam, sentence of death may only be imposed for the most serious of crimes. The Safeguards guaranteeing protection of the rights of those facing the death penalty provide: "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences." We would note that drug trafficking has consistently been held by the Human Rights Committee, as well as by the Special Rapporteur, to fall short of the "most serious crimes" threshold. (see e.g, A/50/40 (1995), para. 35 [HRC]; A/55/40 (2000), para. 13 [HRC]; A/51/457 (1996), para. 107 [SR].) Under international human rights law, the crimes for which the above were convicted, while serious, cannot be considered among the "most serious crimes" for which the death penalty may be imposed. We note that the Human Rights Committee in its 2002 Concluding Observations on Vietnam reported a reduction in the number of crimes that carry the death penalty, from 44 to 29, but expressed concerns with the large number of crimes for which the death penalty may still be imposed including for crimes that are not considered as the most serious ones (U.N. Doc. CCPR/CO/75/VNM (2002)).

Right to have conviction and sentence reviewed by a higher tribunal: Article 14(5) ICCPR provides "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." This requires that a review by a higher court must be a genuine review of the issues in the case.

We are informed however that in 1999, 99.93% of appeals failed (1999 People's Supreme Court Report), and there were similar figures in 2003 when only 7 convictions were overturned on appeal and in 2004 when only 5 successful appeals

were recorded. In the circumstances, we are concerned that the review of the above persons' convictions and sentences may have not have amounted to a genuine review and therefore have been in violation of the provisions of ICCPR.

Prohibition on executing the mentally ill: To execute an individual who is mentally incapacitated violates the right not to be subjected to torture, inhuman or to cruel, inhuman or degrading treatment or punishment (article 7 ICCPR), and to impose a death sentence on a mentally incapacitated individual is also prohibited (article 6(2) ICCPR). The great importance attached to this norm by the international community is further indicated by its inclusion in the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (principle 3: "nor shall the death sentence be carried out... on persons who have become insane") and resolutions of the Commission on Human Rights (see CHR resolution 2000/65, paragraph 3 (e), urging States "not to impose [the death penalty] on a person suffering from any form of mental disorder"). In light of the medical evidence submitted regarding Le Manh Luong's mental health condition, it would appear that the imposition of the death sentence and execution would be in violation of the provisions of ICCPR.

Shackling of prisoners: We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. We would further like to draw your Government's attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment." In the opinion of the Special Rapporteur on Torture the practice of shackling somebody for twenty four hours a day is inhuman and degrading and serves only as an additional form of punishment of someone already subjected to the stress and grief associated with having been sentenced to death.

We ask your Excellency's Government not to carry out the executions of the above named persons for the reasons given and to consider commuting their sentences to an appropriate term of imprisonment.

Response from the Government of Viet Nam dated 2 August 2007

The Government informed that they were core actors of a transnational drug crime organization. Due to the extremely serious offences, the four said persons were tried and sentenced to death upon their crimes of drug-trafficking (article 194 of the Penal Code), illegally buying, selling and using military weapons (article 230 of the Penal Code), and using forged certificates and other important documents (article 266 of the Penal Code). With regard to a specific crime of drug-trafficking, the Penal Code stipulates that illegally buying and selling over 100g of heroin is a commission of an extremely serious crime, and for an amount over 600g, the trafficker will face the death sentence. Currently Luong, Tuan and Can are detained at a prison in Nghe An province. They are strictly supervised in accordance with law provisions on death-sentenced offenders. With regard to Le Manh Luong in particular, he had 16 previous

convictions and offences tried by courts of the United Kingdom upon various types of crimes. During the investigation and trial on Luong in Viet Nam, he played many cunning tricks against the concerned agencies, inter alia, he pretended to be suffering from mental sickness, with a view to avoiding criminal responsibilities. The investigation agency sent Luong to the Central Council of Mental Medical Jurisprudence for examination. The results were negative and showed he had full civil capacity to carry out his criminal responsibilities. During the time he was monitored and examined, he was able to communicate with his family members, bribe cadres of the concerned agencies and the Central Council, and organize his escape from the Central Institute of Mental Health. This demonstrates that Luong was not mad at all; he was fully able to be aware of and control his behaviour. The trial on the above-mentioned individuals was totally lawful and in full accordance with criminal procedures recognized by the international community. The trial was attended by representatives of the British Consulate because a few offenders held British passports (like Le Manh Luong). The Government is of the view that the application of the death penalty must be based on the specific conditions of each country. In Viet Nam, it is necessary to maintain the death penalty on persons who commit to extremely dangerous crimes. The death penalty is a necessary and effective deterrence to crimes.

Viet Nam: Death in Custody of Kpa Kin

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Viet Nam in relation to the death of Kpa Kin.

Allegation letter dated 19 October 2007 with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture

We would like to bring to your Government's attention information we have received regarding Mr. Kpa Kin, a Christian believer aged 35, born at Ploi Tao Or village, commune Ia Hru, district Cu Se in Gialai Province. According to the information received:

In April 2004, Mr. Kpa Kin participated in a demonstration calling for religious freedom and land rights, following which he went into hiding. He was arrested on 16 December 2005 by security police and detained in Cu Se District. He was then transferred to T-20 prison in Pleiku Province and later to Phu Yen Province prison. Upon each transfer he was beaten with batons, kicked and electro-shocked on all parts of his body. As a result, he became seriously ill and needed to be taken to the hospital in Phu Yen Province, where the doctors, since they were unable to help him, recommended that he be released for medical reasons. However, on 24 August 2007, Mr. Kin died in

Phu Yen Province hospital. When his family asked for his corpse to be returned to his home in order to be able to bury him, the request was refused. The authorities argued that since Mr. Kin was sentenced to three years in prison and had not yet finished his prison term, his body will be buried at the prison; only after the expiration of the three-year term, his relatives may collect the corpse.

Without in any way implying any conclusion as to the facts of the case, we recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) to which Viet Nam is a Party enshrines the right not to be arbitrarily deprived of one's life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. This means that a State is presumed to be responsible for the death of the person under international law, unless clear evidence to the contrary emerges, explaining how the death occurred. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (1990)): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

We should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Kin. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

We would like to draw your Government's attention to General Comment No. 31 [80] in which the Human Rights Committee concluded that the right to a remedy enshrined in Article 2 ICCPR includes the obligation for the State to investigate promptly allegations of violations including summary and arbitrary killings. In addition, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council Resolution 1989/65), establish that "there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions," and that these investigations should include an adequate autopsy. These Principles also provide for the return of the body of the deceased to his family upon completion of the investigation.

We would also like to draw your Government's attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination

based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights.

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Kin's relatives are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations/autopsies, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information as to the existence of a rule which establishes that the remains of someone who dies in custody will not be returned to his family until the term of his sentence has expired.
5. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please indicate whether compensation has been provided to the family of the victim.

Response from the Government of Viet Nam dated 18 December 2007

Mr. Kpa Kin, born in 1972, permanently residing at Tao Or Village in the Gai Lia Province, was tried on 7 August 2006 for suspicion of carrying out illegal activities. He was found guilty and sentenced to 11 years of imprisonment. He carried out his sentence at Xuan Phuoc Prison, where he enjoyed medical care and regular health examinations and was allowed to follow a vocational training course. In early July 2007, the medical doctors of the prison diagnosed him with liver cancer. On 13 July 2007 he was admitted to the clinic in the prison but his illness did not recede. On 24 July 2007, he was sent to a general hospital of Phu Yen Province, where he was given wholehearted and thoughtful care by doctors and his family members, but due to his liver cancer he passed away on 24 August 2007. Immediately after his death the Board of Superintendents of the prison notified his family, the local administration where he had his permanent residence and the People's Court of Phu Yen Province in order to follow the rules of procedure to register the death of a prisoner in accordance with the laws.

The Government further stated that during his hospitalization in the Phu Yen Province, the Board of Superintendents informed Mr. Kin's family members of his health status so they could take care of him. His wife took care of him till his death, after which she signed a minute on the forensic examination identifying the cause of death as liver cancer. Members of his family and clan prepared his funeral, requesting the Board of Superintendents in writing to make arrangements to bury him at a cemetery in Phu Yen Province. According to the Government, Mr. Kin's stepfather thanked the doctors of the hospital, the prison personnel and Board of Superintendents in writing for their care and assistance as well as for providing all the costs of the funeral of Mr. Kin and financial assistance to cover the travel costs of his family members. He also confirmed that his family and clan did not have any complaint about the death of Mr. Kin.

Yemen: Death Sentences of Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Yemen in relation to the death sentences of Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish.

The SR would request that he be informed of the outcome of the review by Primary Court.

Urgent appeal dated 8 December 2005

I would like to draw the attention of Your Excellency's Government to information I have received concerning the situation of Mr. Ismail Lutef Huraish, a 47-year-old deaf man and his cousin Mr. Ali Mussara'a Muhammad Huraish, aged 37, who are reportedly at risk of imminent execution. They were sentenced to death in 2000 for a murder committed in 1998. The Supreme Court of Yemen upheld their death sentences in January 2004. I understand that President 'Ali 'Abdullah Saleh, who has the power to grant them clemency, is currently considering their sentences. Concerns have been expressed that the two men were sentenced to death following trials that may have fallen short of international fair trial standards. According to the information I have received, at no time during the judicial process did the authorities provide access to sign-language interpretation for Ismail Lutef Huraish, preventing him from giving his own account of his alleged involvement in the murder. It appears that he was convicted solely on the basis of statements made by Ali Mussara'a Muhammad Huraish during police interrogation and during their trial, which allegedly implicated both men in the murder. Detailed information about the circumstances in

which Ali Mussara'a Muhammad Huraish's confessions were obtained has not been made available to me.

I would like to remind Your Excellency that the death penalty must be regarded as an extreme exception to the fundamental right to life and must as such be interpreted in the most restrictive manner. Accordingly, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences.

The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment. The alleged failure of the authorities to provide the means for Ismail Lutf Huraish to communicate is in violation of norms applicable at both domestic and international level. Indeed it violates Article 337 of the Yemeni penal code, which states that deaf defendants must have access to sign-language interpretation, and Article 14 (3) of the ICCPR, which states that defendants have the right to be informed of the charges against them and to have proceedings conducted in a language which they understand. This would appear to include finding the appropriate language or method to inform people with a hearing or speech disability of the charges and proceedings against them.

While I am fully aware of the serious nature of the crime these two men have been found guilty of, I would respectfully remind Your Excellency that "in capital punishment cases, the obligations of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights admits of no exception". (Little v. Jamaica, communication no. 283/1988, Views of Human rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right to be informed promptly and in detail in a language which the accused individual understands of the nature and cause of the charge against him, the right not to be compelled to confess guilt and the right to adequate time and facilities for the preparation of one's defence. Without in any way pre-judging the accuracy of the information I have received, I would respectfully request Your Excellency's Government to provide me with:

- a) the details of the trial proceedings of Ismail Lutf Huraish and Ali Mussara'a Muhammad Huraish, including the specific charges against them, with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment;
- b) information as to whether they were given the right to formal representation by a lawyer and whether Ismail Lutf Huraish was given access to sign-language interpretation;
- c) details of the circumstances in which Ali Mussara'a Muhammad Huraish's confessions were obtained.

In view of the urgency of the matter, I would appreciate a response on these matters before any irreversible steps are taken in relation to the fate of Ismail Lutf Huraish and Ali Mussara'a Muhammad Huraish.

Response from the Government of Yemen dated 2 July 2007

The Government of Yemen informed that the case for the two persons concerned (and after the death penalty has been approved) has been re-submitted to the Primary Court for a second review of the lawsuits problems raised by the concerned parties.

Yemen: Death Sentence of Adil Muhammad Saif al-Ma'amari

Violation alleged: Non-respect of international standards relating to the imposition of the death penalty

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Yemen. The SR is concerned, however, that Adil Muhammad Saif al-Ma'amari was executed despite the apparent lack of investigation into the allegations that his confessions were extracted with torture.

Urgent appeal dated 8 March 2006 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Adil Muhammad Saif al-Ma'amari who has reportedly been sentenced to death for a murder committed when he was 16 years old. According to the information we have received:

Adil Saif al-Ma'amari was arrested on 27 July 2001. He was tortured at a police station and confessed to the murder of his relative during an argument. During his trial at a lower Court in the city of al-Rwana, the defendant immediately protested that he was under 18. On the orders of a judge he was examined by a doctor, who confirmed that he had not yet passed his 17th birthday. Nevertheless, the court decided to sentence him to death on 19 October 2002. The sentence has reportedly been upheld by the Taiz Court of Appeal on 23 May 2005 and the Supreme Court on 27 February 2006. Mr. Adil Saif al-Ma'amari's sentence is with President Ali 'Abdullah Saleh who has the power to ratify or commute the death penalty; the young man is said to be at imminent risk of execution.

In view of the urgency of the matter and the irreversibility of the punishment, we respectfully request your Excellency's Government to suspend the execution of Mr. Adil Saif al-Ma'amari as it would be incompatible with the international obligations of Yemen under various instruments which we have been mandated to bring to the attention of Governments. The right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically expressed in article 6 of the Convention of the

Rights of the Child. More explicitly, article 37 (a) provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age.

In addition, article 6 (5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We also respectfully remind your Excellency that “in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 (of the International Covenant on Civil and Political Rights) admits of no exception (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right not to be compelled to confess guilt and the right to adequate time and facilities for the preparation of one’s defence.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency’s Government to take all necessary measures to guarantee that the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting Mr. Adil Saif al-Ma’amari to torture is ensured.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that Adil Saif al-Ma’amari was subjected to torture while in pre-trial detention. If no inquiries have taken place or if they have been inconclusive please explain why.
3. Please provide the full details of any prosecutions which have been undertaken with regard to the above mentioned alleged torture. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

Response from the Government of Yemen dated 2 July 2007

The Government informed that the death penalty against Adil Muhammad Saif al-Ma'amari has been executed as of 13th of January 2007, for a murder he committed on the 31st of July on 2001, killing his late relative Mr. Fozzy Abdulsalam Al-Ma'mari during an argument, according to his confession and to confirmed documentary evidence that the accused person's age was 18 years when he committed the crime, the death sentence has been executed in accordance to the decision of the Primary Court approved by the Yemeni Supreme Court and Yemeni Supreme Council of Justice signed on the 31st of January 2007.

Yemen: Death Sentence of Amina Ali Abdulatif

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 female (juvenile offender)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Yemen and welcomes the information that the death sentence of Amina Ali Abdulatif has been suspended and that she has been released.

Urgent appeal dated 17 October 2006 sent with the Special Rapporteur on the question of torture

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 303-305), relating to the death sentence of juvenile offender **Amina Ali Abdulatif**.

As indicated in my report, I welcome the decision of your Excellency's Government to reconsider the case of Amina Ali Abdulatif in light of Yemen's treaty commitments not to execute persons for crimes committed when under the age of 18. As further indicated in my observations, I would be grateful if your Government could provide me with information on the outcome of your Government's reconsideration.

Response from the Government of Yemen dated 10 December 2007

The Government of Yemen informed that the case has been closed and finalized and the named person has been released on the 9th of October 2007, based on the victim's family's decision to waive their retribution rights.

Yemen: Death Sentence of Ibrahim Sharaf al-Din

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Yemen. However, the SR regrets that the Government's communication is not responsive to the allegations that have been made and does not appear to reflect a thorough investigation of whether the trial proceedings fully complied with international standards relating to the imposition of capital punishment.

The SR would request that he be provided with the decision of the appeal court.

Urgent appeal dated 4 December 2006 sent with the Special Rapporteur on the independence of judges and lawyers

We would like to draw the attention of your Government to information we have received regarding Mr. **Ibrahim Sharaf al-Din** who was sentenced to death by the Specialized Criminal Court in Yemen on 23 November 2006 after a trial whose proceedings reportedly fell short of international fair trial standards. The case is now subject to appeal. If his sentence is upheld he will be at risk of execution. According to the information received:

Ibrahim Sharaf al-Din was among 37 members of the Shi'a Zaidi community charged in connection with an alleged "plot to kill the President and senior army and political officers". Ibrahim Sharaf al-Din was arrested in May 2005 and held incommunicado for several months at al- Mabathith al-‘Ama (General Investigation unit) in Sana'a. It would appear that while detained incommunicado, all 37 defendants were interrogated without a lawyer being present. During the trial that started in August 2005, lawyers were reported to have been prevented from obtaining a copy of the court file, including full interrogation records, to enable them to exercise an effective right to defence. Thirty-four of the defendants were sentenced to prison terms of up to eight years' while two others were acquitted.

Without prejudging the accuracy of the allegations reported above, we would like to recall that in death penalty cases, the obligation of States parties to observe all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) allows for no exception. Relevant to the case at issue, the right to a fair trial includes the guarantee of "adequate time and facilities for the preparation of [one's] defence and to communicate with counsel" (Article 14(3)(b)). This guarantee would be seriously violated if, as alleged, the lawyers were not allowed to obtain a copy of the court file, including full interrogation records.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Ibrahim Sharaf al-Din are respected. We therefore ask you to ensure that his rights to an appeal and as applicable, to seek pardon are fully guaranteed. Considering the irremediable nature of the death penalty, we also ask you to ensure that in case his death sentence is upheld after his appeal, the execution be suspended until the complaints regarding his right to a fair and public

hearing by a competent, independent and impartial tribunal established by law have been thoroughly investigated and all doubts in this respect dispelled.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide details concerning the legal avenues of appeal already exercised by the defendant and those still open to him to challenge his conviction and sentence.

Response of the Government of Yemen dated 9 February 2007

The Government informed that the named person has established a terrorist cell targeting peace, stability, national and public security. They committed criminal acts in the capital Sana'a as follows:- 13 bombings resulting in a total of killing and injuring more than 25 persons. Furthermore, the named person has been caught guilty for trying together with the terrorist cell to bomb the US Embassy in Yemen with missiles and they were all transferred to the Specialized Criminal Court in Yemen for trial where he has been sentenced to death. The case is still being looked upon in the appeal court.

Yemen: Death Sentence of Hafez Ibrahim

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Yemen and welcomes the information that Amina Ali Abdulatif has been released.

Allegation letter dated 7 August 2007

I would like to refer to my urgent communication to your Excellency's Government of 21 April, 2005, concerning the case of Hafez Ibrahim who was reportedly sentenced to death in 2005 for murder, committed when he was 16 years of age. According to information I have received, on 7 April, 2005 the Yemeni President stayed Hafez Ibrahim's execution to allow time for an agreement to be reached in this case. The age of the accused was reportedly disputed. The relatives of the victim reportedly refused to pardon Hafez Ibrahim and in July 2007 the Supreme Court upheld the death sentence.

I would like to draw your attention to the fact that the execution of Hafez Ibrahim would violate international legal obligations of Yemen. In particular, unless the doubts regarding his age at the time of the crime can be dispelled, the execution would be explicitly contrary to Article 37(a) of the Convention on the Rights of the Child to which Yemen is a Party and which provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. The Execution would also be explicitly contrary to article 6(5) of the International Covenant on Civil and Political Rights to which Yemen is a Party and which provides "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age". Unless it can be definitively proven that Hafez Ibrahim was over the age of 18 at the time of the crime, it would be a violation of international obligations to proceed with the execution. Where any doubt at all remains it must be resolved in a way that preserves human life.

In light of these serious and pressing concerns, I would respectfully request Your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. Unless your Excellency's Government is able to demonstrate respect for these essential substantive protections, which flow from the international obligations accepted by Yemen, the death sentence imposed must be commuted.

Response from the Government of Yemen dated 10 December 2007

The Government informed that in connection to the death sentence against the Yemeni National Hafiz Ibrahim, the case has been closed and finalized and the named person has been released on Wednesday 31st October 2007, based on the victim's family decision to waiver their retribution rights.

Zimbabwe: Killing of Opposition Members in Harare

Violation alleged: Deaths due to excessive use of force by law enforcement officials

Subject(s) of appeal: At least 11 to 13 persons

Character of reply: Allegations rejected but without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur notes the information provided by the Government of Zimbabwe in relation to the killing of civilians in Harare in March 2007. However, the SR would note that he finds the conclusory rejection of all allegations to be strikingly unconvincing.

Allegation letter dated 30 March 2007

This letter focuses on reports of killings of civilians by the security forces in Harare in March 2007. A separate letter addressing a broader range of issues was sent to you on 20 March by 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 question of torture.

According to information received:

On 11 March 2007 riot police in Highfield, Harare broke up a meeting organized by the "Save Zimbabwe Campaign" declared to have been illegal using tear gas, in the course of which Gift Tandare, Youth Chairperson of the National Constitutional Assembly was shot dead. An unspecified number of persons were reportedly injured and fifty arrested. It was reported that Mr Tandare was shot trying to scurry for cover in an attempt to avoid a volley of bullets fired by the police. It is my understanding that a pathologist's report found that Mr Tandare died from trauma caused by excessive bleeding from a single gunshot wound from a high velocity weapon, since the bullet travelled through the victim's body.

On March 13 police are also reported to have quelled mourners attempting to attend the funeral of Mr Tandare in a Harare township, shooting two MDC activists, Nickson Magondo and Naison Mashambanhaka at point blank range.

Subsequently it has been reported that eight to ten so far unnamed persons are reported to have died at Harare hospitals from injuries consistent with being beaten by state security agents with blunt instruments. It has been reported that on 16 March President Mugabe called on ZANU-PF to "deal" with opposition members in their neighbourhoods.

In this connection, I would like to refer your Excellency's Government to its obligations reflected in a variety of international instruments. Article 6 of the International Covenant on Civil and Political Rights, to which Zimbabwe is a party, provides that no one shall be arbitrarily deprived of his or her life. In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

Article 3 of the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in themselves binding law, provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces.

Article 3 states "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." It thus sets forth the twin safeguards of necessity and proportionality in the use of force.

Principle 9 reads:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” (emphasis added)

I urgently appeal to your Excellency’s Government to ensure that any ongoing operations by the security forces conform to these principles.

In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement and necessary, there must be a “thorough, prompt and impartial investigation” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st session of the Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions”.

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

1. Are the allegations in the above summary of the events accurate?
2. What were the instructions given to the security forces before and during the above mentioned operations by the police?
3. Please provide details of any investigation or inquiry that been launched into the above incidents
4. Will those injured by security forces and the family members of those killed be compensated?

Response from the Government of Zimbabwe dated 26 April 2007

MEMORANDUM

INTRODUCTION

The maintenance of law and order for any nation comes at a very high cost to the public and law enforcement agents. This is compounded by a situation where there is

brazen defiance of the law by those who seek to unseat a Constitutional government through violence. The activities of the Movement for Democratic Change (MDC) and allied formations since the beginning of this year (2007) indicates the party as a purveyor of violence and no law enforcement agent would just watch while there is mayhem in the country.

The criminal actions of the MDC have been roundly applauded by some western nations and associated media houses in the support of an illegal regime change agenda in Zimbabwe. There have therefore been grandiose distortions of political events in the country and particularly those of March 11, 2007.

BACKGROUND TO MARCH 11, 2007

On January 28, 2007 at a political rally in Glenview a high density of Harare Morgan Tsvangirai a leader of one of the MDC factions warned his supporters to brace for mass action. Some MDC legislators also addressed the rally attended by some 600 supporters.

Again on January 8, 2007 at a ground in Masasa an industrial area to the east of Harare, Peter Mudavanhu told MDC supporters of the existence of the so-called Democratic Resistance Committees (DRCs) which would spear-head acts of violence to unseat the government.

Lovemore Madhuku, the National Constitutional Assembly leader (NCA) addressed a meeting on January 31, 2007 at which he indicated that he would go around the country mobilising people to fight until Zimbabwe became ungovernable forcing the Zanu PF government to the drafting of a new constitution.

On February 6, 2007 Arthur Mutambara, a leader of one of the MDC factions told supporters at a local hotel of his defiance campaign which he said was in collaboration with the Save Zimbabwe Campaign. He termed his new approach "a clarion call for revolution".

It is from the outlined occurrences above and other series of meetings held around the country that the message of violence through the DRCs became very loud and clear. The first acts of violence where on February 11, 2007 when MDC youths after a rally which had been cleared by Police went on to loot goods and a shop owned by a Zanu PF candidate in the 2005 parliamentary election at the behest of one of the speakers. On February 16, 2007 about 100 MDC youths marched through the city centre of Harare. In the process they looted shops and attacked four police on patrol. Two of the officers suffered severe head injuries and had to be hospitalised.

PROHIBITION ORDERS ON RALLIES IN HARARE

Following the criminal activities of the MDC supporters on February 11 and 16, 2007 and in terms of the law in Zimbabwe the regulating authorities of public gatherings decided to break the momentum of political violence that was building up and issued prohibition orders for at most three months within each of the Harare Police districts. The prohibition order for Harare South district was issued on February 22, 2007 followed by bans in other districts. These bans were publicised in the local media and

meetings were held with political parties to alert them of this development. The bans affected all political parties. Elsewhere in the country the regulating authorities did not issue such bans as there were political violence cases.

EVENTS OF MARCH 11, 2007

The events of March 11, 2007 must be looked at from the perspective of prohibition orders that had been issued on February 22, 2007 and the MDC position to defy and encourage lawlessness. In fact the intended rally under the guise of a prayer meeting was intended to defy the banning orders that had been issued.

It might be pertinent to indicate that the banning orders had been issued to thwart political violence, which was characterising campaigning dynamics in Harare.

On the morning of March 11, 2007 Police officers were deployed in anticipation of any violence that would occur. True to form, a Police team on patrol was attacked by rowdy MDC youths at Lusaka Shopping Centre along Mangwende Drive in Highfields. The groups emerged from houses in smaller numbers onto the streets and marched towards 25 police officers who were deployed there to maintain law and order. The rowdy youths threw tear smoke canisters, stones and petrol bombs at the police officers.

The police officers tactically retreated from the youths who were using children as human shields. As the officers retreated two of them namely 034294A Sergeant Makurumure of Harare Central and 053737J Constable Njowa of Harare Central Operations were injured and sustained deep cuts on their heads. Other officers who had been alerted of the disturbances rescued them. They were taken to Harare Central Hospital where they were admitted. They stayed in hospital for two weeks.

At about 1300 hours, the same group of about 60 MDC youths barricaded Masvingo-Harare main road at Zindoga Shopping Centre where they looted braai meat from some patrons who were braaing meat at the business centre. The same group of youths tried to set on fire a Zimbabwe National Army vehicle B1800 pick up truck Registration number 438897 driven by Major Stanley Dhiadini, which was parked at the shopping centre.

Damage to the vehicle includes broken windscreen and the passenger seats were slightly burnt. On lookers put out the fire before major damage was caused to the vehicle.

The dotous group left the shopping centre and barricaded Simon Mazorodze road near Zindoga shopping centre and intercepted a ZUPCO bus, which was carrying mourners to attend burial at Mbudzi Cemetary. They boarded the bus and robbed mourners of six cell phones and ordered everyone out of the bus. They stoned the bus shattering a number of window panes and tried to set the bus on fire, but failed.

At about the 1440 hours another group of some 200 MDC activists emerged from houses and attacked police officers on patrol at Utsanana Bar corner Mangwende Drive and 216th Street near Mhizha Primary School. The rowdy MDC youths overwhelmed the police officers and armed reinforcements were sent in to rescue the

Police officers under attack. Police fired 18 warning shots into the air but the MDC youths continued their attack forcing the Police to shoot the ring leader Gift Tandare in self defence or protection of other officers. At this time the rowdy youths dispersed.

Comment on information supplied to Commission

The circumstances and background given above summarises political violence by the opposition political parties in the country this year.

It is a fallacy that riot Police 'broke up a meeting organised by Save Zimbabwe Campaign' because there was no political rally or meeting in progress in any part of Highfields. The police cannot therefore have participated in an activity that is non-existent.

Gift Tandare, as outlined above, was shot in defence of Police officers who were under attack by the group he was leading. The shooting was carried out in terms of Police regulations and standing orders in the use of firearms.

No formal reports have been made of the shooting at the funeral of Gift Tandare.

Follow-up allegation letter dated 8 June 2007

I am grateful for your note dated 26 April, 2007 enclosing a letter and memorandum from the Senior Assistant Commissioner of Police in response to my letter dated 3 April, 2007.

In the spirit of following up on my letter of 3 April, 2007 and on the information provided above, I would like to establish whether an official investigation was undertaken into the shooting of Gift Tandare as well as into the separate reports of 8-10 other persons being beaten to death and, if so, whether the report is available. I would also be grateful if you could furnish me with a copy of the Police regulations and standing orders in the use of firearms, referred to at p.4 of above memorandum

Response from the Government of Zimbabwe dated 3 July 2007

There is no record of the shooting of Nickson Magondo and Naison Mashambanhaka.

There is no record of the unnamed persons reported dead at Harare hospital. It would be appreciated if the names of the deceased persons could be revealed to enable the police to institute an enquiry.

Regarding the arrest of the Movement for Democratic Change leaders, the Government refers to the document prepared by stakeholders headed by Foreign Affairs including Zimbabwe Republic Police, President's Department and Zimbabwe Defence Forces in March 2007.

Regarding the alleged assault of Harrison Nkomo, the Government informed that the latter was never denied access to the arrested parties as alleged. He was not at all assaulted by the police.

Regarding the alleged arrest of Zwelithini Viki, Kudakwashe Mapundu, Lynnette Mudehwe and Sydney the Government informed that these persons, who are leaders of the Zimbabwe National Students Union, were picked up near Quality International Hotel as suspects on 13 March 2007 following their alleged involvement in a meeting by Zimbabwe Congress of Trade Unions calling for mass stayaways. They were interviewed and allowed to go home. They were never at any time charged or detained by the police.

Regarding the arrest of Arthur Mutambara, Sekai Rolland and Grace Kwinjeil, the Government informed that these persons had earlier on been arrested for public violence on 11 March 2007 and were released to their lawyers' custody pending appearance in court. On 17 March 2007, the three went to Harare International Airport with the intention of flying out of the country. They had not notified the police of their intention to leave the country as had earlier on been agreed. This was viewed by the police as an attempt to flee. The three were arrested and made to appear in court on the same day. An order was made by the court for the police to proceed by way of summonses.

Regarding the assault on Nelson Chamisa, the Government stated that whilst it is common cause that Nelson Chamisa was assaulted at Harare International Airport on 18 March 2007, he did not make an official report to the police to enable the police to institute investigations. Several attempts by the police to record a statement of complaint have been fruitless. Chamisa is uncooperative in this regard. It should be noted that an assault is a criminal case that requires the complainant to cooperate with the law enforcement agents.

Zimbabwe: Death of Edward Chikombo

Violation alleged: Impunity

Subject(s) of appeal: 1 male

Character of reply: largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur notes the information provided by the Government of Zimbabwe in relation to the death of Edward Chikombo. The SR would request that the Government update him on the status of its investigation into this case.

Allegation letter dated 2 May 2007 sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture

We would like to bring to your Government's attention information we have received concerning the following cases:

On 29 March 2007, Mr. **Edward Chikombo**, a cameraman for the state broadcaster *Zimbabwe Broadcasting Corporation (ZBC)*, was abducted by armed men from his home in a township outside the capital Harare. His body

was found a few days later, in bushes 50 miles west of Harare. Mr. Chikombo was a sympathizer of the opposition Movement for Democratic Change (MDC) and his murder could be linked to the dissemination, out of Zimbabwe, of television images of the opposition leader Morgan Tsvangirai after he was beaten up by police on 11 March.

On 1 April 2007, police arrested Mr. **Gift Phiri**, a reporter of the exiled weekly *The Zimbabwean* and beat him severely while in detention. On 5 April, he was released on bail, and immediately hospitalized for treatment. He has been charged with “practicing as a journalist without accreditation and publishing false news”.

While we do not wish to prejudge either the accuracy of these allegations or the question whether Mr. Chikombo was abducted and killed by security forces of your Excellency’s Government or acting on its behalf, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in Article 7 of the International Covenant on Civil and Political Rights, which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” We would also like to draw your Government’s attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would also like to refer Your Excellency’s Government to the fundamental principles applicable under international law to deaths in custody. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. As a consequence, when an individual was last seen alive in State custody, there is a presumption of State responsibility.

In order to assess whether a violent death under circumstances not clarified is attributable to the Government and, if so, whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a “thorough, prompt and impartial investigation” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We therefore urge your Government to initiate an inquiry into the circumstances surrounding the death of Mr. Chikombo and the treatment Mr. Phiri received while in detention.

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

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

1. Are the facts alleged in the above summary of the case accurate?
2. Do the armed men who abducted Mr. Chikombo on 29 March 2007 belong to your Government's security forces, or are they otherwise linked to your Government?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the cases of Mr. Chikombo and Mr. Phiri. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to Mr. Phiri or the family of Mr. Chikombo.

Response from the Government of Zimbabwe dated 4 September 2007

This memorandum seeks to respond to the inquiry by the Office of the United Nations High Commission for Human Rights dated May 2, 2007 in the cases of alleged human rights abuses on Gift Phiri by the Police and the alleged kidnapping and subsequent discovery of a dead body of Edward Chikomba (incorrectly spelt as Chikombo in the UN inquiry).

The Zimbabwe Republic Police is not aware of any beatings on Gift Phiri while he was in police custody or the motive for the alleged kidnapping and subsequent death of Edward Chikomba.

Gift Phiri

The facts pertaining to Gift Phiri are that he is a stringer for a weekly newspaper 'The Zimbabwean' and he wrote an article that appeared in that paper of 16-22 November 2006. The article contained false information. Part of the article had the following sentence, "Go now - Generals tell Mugabe as ZANU PF loses support" This was false as there was no time or occasion when the Generals ever said this to the State President.

Following the publication of the article, it was noted that Gift Phiri was practicing journalism without having been accredited by the Media and Information Commission which is a statutory requirement under the Access to Information and Protection of Privacy Act Chap 10:27 for all practicing journalists.

On 1 April 2007 Gift Phiri was arrested and detained by Police. At no time was he assaulted while in police custody. On 5 April 2007 he was taken to court where he was remanded out of custody to the June 4 2007. While in court, Gift Phiri never raised any allegations of assault by the Police while in Police custody. It is custom in Zimbabwe that all suspects brought to court are asked by the presiding magistrate if they have any complaints against the Police or about their treatment while in Police custody. If such complaints had been raised at this stage, the magistrate would have, as is the norm, ordered that an investigation into the allegations be looked into before the case the suspect is facing goes for trial.

The following charges were preferred against Gift Phiri:

- i. Contravening section 79(1) of the Access to information and Protection of Privacy Act Chap 10:27 "Practicing journalism without accreditation by the Media and information commission". This discovery was made after the publication of the said story.
- ii. Contravening section 80(1)(b) of the Access Chapter 10:27 "Abuse of journalistic privileges". This is in respect of the false allegations about the story on Generals.

Current position

Gift Phiri last appeared in court on the June 4, 2007 and the case was remanded to July 9, 2007 for trial. Harare Central Crime register numbers 30/04/07 and 170/04/07 refer.

Edward Chikomba

At the time of his alleged kidnapping and subsequent death, Edward Chikomba was not a cameraman for the state Broadcaster (Zimbabwe Broadcasting Corporation) as alleged in the United Nations High Commissioner for Human Rights document. He was retrenched together with others during the retrenchment exercise carried out by the ZBC in 2001. The Police are not aware about Edward Chikomba's political affiliation or of his alleged dissemination out of Zimbabwe of television images of the opposition leader Morgan Tsvangirai. However what is clear is that there was no secret about the injuries suffered by Tsvangirai and therefore any alleged smuggling

of television images would only have been an act in futility as the pictures were in the public domain. Any photographes or cameraperson could take the pictures.

The circumstances of his disappearance are that on 29 March 2007 at around 1800 hours it is alleged that Edward Chikomba was bundled into an Isuzu twin cab as he was about to get to his house in Glenview, Harare. Four men are said to have been involved in the abduction. The truck is said to have driven at a high speed towards the city center of Harare.

On the same day Chikomba's relatives who indicated that they had heard him shouting for help as he was taken away made a report at Glenview Police station. The police opened a kidnapping docket with the following crime register number, CR 716/03/07.

On 01 April 2007 the now deceased's body was found at Old Lands farm in Darwendale. The police took it to Chinhoyi hospital mortuary. The body was collected on 5 April 2007 from Chinhoyi Hospital mortuary by a relative of Chikomba for burial in Harare. The Criminal Investigations department is carrying out an investigation of murder in connection with the case. So far no one has been arrested in connection with this case.

Liberation Tigers of Tamil Eelam (LTTE): Killings of Opposition Activists and Other Individuals.

Violation alleged: Deaths due to attacks or killings by paramilitary groups or private forces.

Subject(s) of appeal: 5 males

Character of reply: no response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Liberation Tigers of Tamil Eelam (LTTE) has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Allegation letter dated 24 September 2007

I am writing concerning recently reported killings of opposition political party activists and other individuals by the LTTE.

According to information that I have received:

Mr Nadaraja Kumaran (alias Murali), a political activist who operated a political office of the Tamileela Makkal Viduthalai Pulikal (TMVP) in Thambalagama (Trincomalee District), was killed at his home by LTTE cadres on 29 August 2007.

According to information I have received on 30 August 2007, Mr S.Srinivasan and Mr C.Wasanthan, Eealam People's Democratic Party (EPDP)

members in Batticaloa, who worked from a political office at Chenkalady, Batticaloa, were shot dead on the Eravur Krishna Kovil road by LTTE cadres riding on a motorcycle. Their bodies were reportedly taken to the Eravur hospital mortuary.

According to information received Mr Subramaniam Shantipan was killed by LTTE cadres while driving his family on a motorcycle along Dutch Road (Jaffna District) on 30 June 2007. He was the postmaster at the Sub-Post Office at Mirusuvil Junction. Because this was in a high security zone, it was patronised mainly by soldiers who used it to send letters and money orders home. LTTE cadres had warned him twice not to work there. He had also been requested by LTTE cadres to use his position to gather intelligence. He had disregarded these requests and warnings.

According to information received, Mr Sinnappan Michael was killed after being abducted by LTTE cadres. He was abducted on 8 September 2007, and the following day his headless body was found in Veerapuram (Vavuniya District). He had previously refused orders to serve in the LTTE.

Without prejudging the accuracy of the reports received, I would like to recall that the LTTE has formally committed itself to international human rights standards, which prominently include the right not to be arbitrarily deprived of one's life and the right to freedom of opinion and expression. The Charter of the North East Secretariat on Human Rights states (Article 1) that "[all] persons deserve to be treated with ... respect for their humanity" and reiterates that "[all] persons have the right to life" (Article 5.1). It also enshrines the "right to be free from incitement of discrimination, hatred or violence" (Article 1.5) and protects the "right to express ... opinions and beliefs freely". In this connection, I would also note that the LTTE is subject to the legitimate demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights, including rights to life, freedom of opinion and expression, and freedom of association.

I would also recall that the LTTE has formally taken upon itself obligations under the Geneva Conventions and its Additional Protocols. Among these obligations is that contained in Article 3 common to the Geneva Conventions, that "violence to life and person, in particular murder of all kinds" is prohibited against "[p]ersons taking no active part in hostilities".

I would further like to recall that in Article 2.1 of the Ceasefire Agreement, the LTTE committed to "abstain from hostile acts against the civilian population" in accordance with international law.

I would also reiterate my earlier observation that "[t]he LTTE should unequivocally denounce and condemn any killing attributed to it for which it denies responsibility. Mere denials are neither adequate nor convincing". (See Report on Mission to Sri Lanka, E/CN.4/2006/53/Add.5, para. 84).

Moreover, it is my responsibility under the mandate provided to me by the Commission on Human Rights and extended by the Human Rights Council, to seek to

clarify all cases brought to my attention. Since I am expected to report on these cases to the Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the allegations summarized above factually accurate?
2. Does the LTTE consider any of the killings justified? If so, on what grounds? Does the LTTE unequivocally denounce and condemn these killings?
3. I am aware that the LTTE operates its own law enforcement machinery in areas of Sri Lanka under its control. Has this law enforcement machinery taken any steps to investigate the killings, identify the perpetrators, and bring them to justice in any of the cases listed above? If no inquiries have taken place or if they have been inconclusive please explain why.
