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

**Report of the Special Rapporteur on violence against women, its causes and consequences,  
Yakin Ertürk**

**Addendum**

**Communications to and from Governments<sup>\*</sup>\*\***

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

\*\* The present document is submitted late to reflect the most up-to-date information possible.

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## **A. Introduction**

1. At its fourth session, the Human Rights Council, in its resolution 2005/41 entitled "Elimination of violence against women" encouraged the Special Rapporteur to respond effectively to reliable information that comes before her and requested all Governments to cooperate with and assist the Special Rapporteur in the performance of her mandate tasks and duties, to supply all information requested, including with regard to implementation of her recommendations, and to respond to the Special Rapporteur's visits and communications.

2. The present addendum to the Special Rapporteur's annual report contains, on a country by country basis, summaries of individual allegations, as well as urgent appeals sent to Governments on individual cases and general situations of concern to her mandate. This report includes summaries of the communications sent from 1 January and 31 December 2006.<sup>1</sup> The report also contains summaries of government replies received until 13 February 2007.

3. The Special Rapporteur recalls that in issuing urgent appeals and in transmitting allegations, she does not make any judgment concerning the merits of the respective cases, nor does she necessarily support the opinions and activities of the persons on behalf of whom she intervenes. In the original communications, the full names of victims and perpetrators have been provided to the Government concerned. In this report, the names of individual victims and alleged perpetrators have been replaced by initials in order to protect their privacy and to prevent further victimization as well as to avoid pre-judgment of the alleged perpetrators.

## **B. Overview of Communications**

### **I. Communications sent**

4. In 2006, Special Procedures mandate-holders sent a total of 1,165 communications to 143 countries and entities, 48 per cent of which were joint communications sent by two or more mandate-holders. More than half of all communications (57 per cent) were urgent appeals related to allegations of ongoing or imminent human rights violations warranting immediate action. Government replied to 32 per cent of all communications sent. Communications sent by the Special Rapporteur on violence against women, its causes and consequences, constituted 7 per cent of all communications sent by special procedures mandate-holders.<sup>2</sup>

5. During the period under review (1 January to 31 December 2006), the Special Rapporteur transmitted 83 communications to 44 Member States: Argentina, Bahrain, Bangladesh, Bulgaria, China, Colombia, Democratic Republic of the Congo, Cyprus, Ecuador, France, Germany, Greece, Guatemala, India, Islamic Republic of Iran, Iraq, Israel, Kyrgyzstan, Liberia, Libya, Maldives, Mauritania, Mexico, Morocco, Myanmar, Nepal, Pakistan, Philippines, Qatar, Russian

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<sup>1</sup> In addition, two allegation letters sent in 2005, which were not reflected in the previous report on Communications Received and Sent (E/CN.4/2006/61/Add.1), have been included. One allegation letter sent on 18 December 2006 was not included. At the time this report was finalized, the Government concerned had not yet had the chance to respond to the issues within the deadline of 60 days indicated in the allegation letter.

<sup>2</sup> It is also worth noting that only 17 per cent of all communications sent by special procedures mandate-holders concerned female victims.

Federation, Saudi Arabia, Sierra Leone, Singapore, South Africa, Sri Lanka, the Sudan, Thailand, Tunisia, Turkey, United Arab Emirates, United States of America, Uzbekistan, and Zimbabwe.

6. 48 communications concerned allegations of human rights violations that had already occurred or reflected longstanding concerns (allegations letters). In 35 cases, the Special Rapporteur sent an urgent appeal because a human rights violation was ongoing or imminent and there was a need to inform the government authorities about the allegations received without any delay.

7. 80 out of 83 communications (96 per cent) were sent jointly with other mandate holders of the Human Rights Council.

8. It is interesting to note that the largest number of joint communications (26) was sent together with the Special Rapporteur on the question of torture, indicating a convergence between diverse forms of human rights violations experienced by women with that of more conventional forms of violations. This also signals an erosion of the public / private sphere dichotomy used for so long to exclude violence against women from public concern and scrutiny. Other communications were sent jointly with:

- The Special Representative of the Secretary-General on the situation of human rights defenders (22),
- The Special Rapporteur on trafficking in persons, especially women and children (18),
- The Special Rapporteur on the sale of children, child prostitution and child pornography (17),
- The Special Rapporteur on the independence of judges and lawyers (13),
- The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (8),
- The Working Group on Arbitrary Detention (8),
- The Special Rapporteur on the human rights of migrants (5),
- The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (4)
- The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (3),
- The Special Rapporteur on freedom of religion or belief (1),
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, (1),
- The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (1).

## **2. Governments Cooperation and Replies to the Special Rapporteur**

9. In each of the communications, the Special Rapporteur has asked Governments to respond to a detailed set of questions in order to clarify the allegations submitted. As of 15 February 2007, the Special Rapporteur had received responses to 43 cases from Governments concerned and would like to express her particular appreciation for timely replies. The Special Rapporteur remains concerned that only half of the communications sent in 2006 (52 per cent) have so been responded to. Many Governments failed to respond and some only responded partially to the issues raised. The Special Rapporteur expresses her appreciation to have received, during the course of 2006, 19 additional responses to communications sent in 2004 and 2005.

10. The following Member States did not respond to any of the communication that the Special Rapporteur sent in 2006: Bulgaria, Democratic Republic of the Congo, Ecuador, Guatemala, India, Iraq, Israel, Liberia, Morocco, Myanmar, Sierra Leone, the Sudan, Thailand, United Arab Emirates, and United States of America.

11. In this regard, the Special Rapporteur would like to recall Human Rights Commission resolution 2005/41 in which the Commission requested all Governments to cooperate with and assist the Special Rapporteur in the performance of her mandated tasks and duties, to supply all information requested, including with regard to implementation of her recommendations, and to respond to the Special Rapporteur's visits and communications.

### **C. Trends and Observations**

12. The communications sent concerned a wide array of issues related to violence against women, its causes and consequences as defined in the 1993 United Nations Declaration on the Elimination of Violence against Women. These included: violence committed by State agents, including arbitrary detention; intimate-partner and intra-family violence, including crimes committed in the name of honour, forced and early marriage; rape, sexual abuse and sexual exploitation; violence against women in the context of labour exploitation; refoulement to another country despite a well-founded fear of violence; as well as other forms of violence grounded in gender-based discrimination.

13. An analysis of the communications sent indicates several areas of particular concern:

#### **1) Violence against women committed by State agents**

14. 42 out of 83 communications (51 per cent of the total number) concern allegations of violence against women, or threats thereof, committed by State agents. Police officers and military personnel were particularly often identified as perpetrators. This category of communications also comprises reported cases, in which authorities sentenced or subjected women to cruel and unusual punishment (including sentencing to stoning and corporal punishment).

15. In this regard, the Special Rapporteur notes article 4 (b) of the 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.

#### **2) Failure to prevent and respond to violence against women with due diligence**

16. According to the Declaration on the Elimination of Violence against Women as well as other international instruments States have a duty to take positive action and exercise due diligence to prevent and protect women from violence, to prosecute and appropriately sanction perpetrators of violence and to ensure that victims of violence receive compensation. States have this duty regardless of whether the relevant acts have been committed by private or State actors. The failure to comply with any aspect of the due diligence obligation constitutes a human rights violation.

17. 36 out of 83 communications sent (43 per cent) concerned allegations that a Member State failed to meet its obligations of due diligence in combating violence against women. The Special Rapporteur has acted on cases, for instance, in which authorities have been reported to let investigations or prosecutions of acts of violence against women lag, or where authorities failed to administer appropriate punishments and penalties.

18. Several communications sent indicate that general problems of impunity and corruption in the public sector exacerbate gender-based violence by depriving women of the option to invoke the rule of law to counter social power structures that systematically discriminate against women.

19. The Special Rapporteur has also acted in cases in which non-State dispute resolution mechanisms reportedly either committed or condoned violence against women, sometimes with the acquiescence of the State concerned. The Special Rapporteur would like to recall her report on the Due Diligence Standard as a Tool for the Elimination of Violence against Women (E/CN.4/2006/61) and reiterate that Member States cannot delegate their human rights obligations to prevent and respond to violence against women with due diligence. They must therefore make appropriate, decisive and timely interventions whenever non-State dispute resolution bodies engage in, condone, or otherwise fail to address violence against women in a human rights compliant manner.

### **3) Violence against women facing multiple and intersecting layers of discrimination**

20. 33 out of 83 communications sent (40 per cent) concerned women facing multiple and intersecting layers of discrimination.

21. Women belonging to national, ethnic or religious minorities or lower social castes, indigenous women, and migrant women are strongly overrepresented among reported victims. The Special Rapporteur has also acted on cases of transgender persons, who identified themselves as women and were targeted due to this sex identity choice, as well as on a case of a lesbian woman, who was reportedly murdered because of her sexual orientation.

22. In this regard, the Special Rapporteur would like to draw attention to the Commission on Human Rights resolution 2005/41 on the Elimination on Violence against women in which the Commission calls on States to address the specific circumstances facing indigenous women and girls in relation to gender-based violence, especially sexual violence, arising from multiple, intersecting and aggravated forms of discrimination, including racism, paying particular attention to the structural causes of violence.

### **4) Violence against human rights defenders or their female relatives**

23. The Special Rapporteur also observes an ongoing trend to subject female human rights defenders and women's rights defenders to violence, including arbitrary detention, and threats of violence. 19 out of 83 communications (23 per cent) concerned cases of this nature.

24. Four communications also referred to cases, in which State agents committed violence against wives or close relatives of male human rights defenders. In these cases, stereotypes about

women's supposed greater vulnerability (held by the perpetrators and often also the targeted defender himself) are instrumentalized to subdue the human rights defender.

#### **5) Violence against pregnant women, especially while in detention**

25. 17 out of 83 communications (20 per cent) related to pregnant women. In several cases pregnant women appear to have been deliberate targets of State violence, especially while in detention. In some of these cases, the alleged perpetrators acted in full consciousness of the pregnancy and with the intention to maximize the harm done to the woman and the fetus.

26. Two cases also indicate a failure on the part of concerned Member States to respect women's sexual and reproductive rights. In this regard, I would like to stress that women must never be forced or otherwise pressured into having an abortion. Conversely, there are also cases, including cases of pregnancy due to rape, in which denying women the possibility of having an abortion may constitute a form of psychological violence against women.<sup>3</sup>

#### **D. Communications sent and Government replies received**

27. Country specific communications sent and Government replies received are presented in the language received. In some cases the Special Rapporteur provides suggestions on which additional information is required to respond effectively to the information received. She also draws the attention of Governments concerned to relevant findings and recommendations contained in her country mission reports and the general recommendations of the Committee on the Elimination of All Forms of Discrimination against Women to the Government concerned.

#### **Argentina**

##### **Carta de alegaciones**

28. El 16 de mayo de 2006, la Relatora Especial, juntamente con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos de conformidad con las resoluciones, envió una carta de alegaciones al Gobierno en relación con la Asociación de Lucha por la Identidad Travestí Transsexual (ALITT), una organización que trabaja en defensa de los derechos de las personas travestís y transexuales en Argentina.

29. De acuerdo con la información recibida: el 16 de septiembre de 2003 la oficina de Inspección General de Justicia (IGJ) habría negado la solicitud de otorgamiento de la personería jurídica de la ALITT. En la carta de negación la IGJ habría basado su decisión en el artículo 33, segunda parte, inciso 1 del Código Civil, que requiere que los objetivos de las organizaciones civiles tengan el objeto de bien común. Según del IGJ, los propósitos de la ALITT que incluyen la lucha para que el Estado y la sociedad acepten el travestismo como una identidad propia y la "construcción de una ciudadanía travestí - transexual" que ofrezca un marco valioso para el desarrollo de la convivencia, integrando así el patrimonio espiritual y cultural de la comunidad, no encuadraban en el concepto de "bien común". Según la información recibida la ALITT habría

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<sup>3</sup> See also World Health Organisation, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2003): "A number of situations give rise to the need for abortion services later in pregnancy, and all levels of the health system should be able to refer women to centres that have the capacity to perform later abortions safely", p. 29. (available online at [http://www.who.int/reproductive-health/publications/safe\\_abortion/index.html](http://www.who.int/reproductive-health/publications/safe_abortion/index.html))



apelado la decisión de la IGC en la Corte Suprema en Argentina y hasta la fecha no habría recibido una respuesta.

### **Respuesta del Gobierno**

30. El 14 de octubre de 2006, el Gobierno de Argentina transmitió la información siguiente:

31. A la pregunta: ¿Son exactos los hechos a los que se refieren las alegaciones presentadas por la víctima?, el Gobierno respondió:

"Sí, son exactos."

32. A la pregunta: ¿Fue presentada alguna queja por la ALITT?, el Gobierno respondió:

"Sí, en primer lugar la ALITT apeló ante la Cámara Nacional de Apelación en lo Civil la decisión de la Inspección General de Justicia (IGJ) del 16 de septiembre de 2003 denegatoria de la autorización para funcionar como persona jurídica. Luego, ante la confirmación de este rechazo de parte de este tribunal, el 19 de abril de 2004 la ALITT interpuso un recurso extraordinario ante la Corte Suprema de Justicia de la Nación. Desde el 7 de abril de 2005 la causa se encuentra en el despacho del Procurador General de la Nación a fin de que emita su dictamen previo a la resolución definitiva por parte de los jueces del Tribunal Supremo."

33. También se solicitó información detallada sobre la base legal de la negación de otorgamiento de la personería jurídica de la ALITT y sobre la compatibilidad de esta con la Declaración de Defensores de Derechos Humanos y con el derecho a la libertad de asociación.

34. Tanto la IGJ como la Cámara de Apelación sostuvieron que el Estado no comparte los objetivos de la ALITT ya que no los considera incluidos en el concepto de bien común que exige el Código Civil para otorgar dicha autorización. Este Código estipula en el artículo 33 que tienen carácter de personas jurídicas privadas: "I. Las asociaciones y las fundaciones que tengan por principal objeto el bien común, posean patrimonio propio, sean capaces por sus estatutos de adquirir bienes, no subsistan exclusivamente de asignaciones del Estado, y obtengan autorización para funcionar".

35. La autorización a que hace referencia esta norma es la que otorga la Inspección General de Justicia conforme al Art. 10, inc. a de la Ley N.º 22315, quien deberá determinar si el objeto estatutario de la asociación propende al 'bien común'. En virtud de la 'supuesta' falta de este requisito, la autoridad administrativa y la justicia le han denegado la autorización para funcionar a la ALITT.

36. El principal argumento que los órganos jurisdiccionales vertieron al denegar la personería jurídica consistió en entender que en la interpretación de la acepción "bien común" no es suficiente que el objeto de la asociación sea lícito sino que también debe ser socialmente útil. El fin útil de la asociación no debe serlo sólo para sus integrantes sino que debe alcanzar a la comunidad toda. Al respecto, la IGJ y la Cámara expresaron que no comprenden cuál es el bien común para toda la sociedad que se sigue de aceptar a las personas travestis o transexuales como

iguales, miembros de la misma comunidad humana; tan sólo observó un beneficio particular para los integrantes del grupo conformado por las personas que detentan esa condición.

37. En este sentido, ambas instancias reprodujeron los argumentos dados en su momento por la Corte Suprema en el caso de la Comunidad Homosexual Argentina (CHA) (12/7/90, ED 138-788). En este caso, la mayoría sostuvo que bien común "supone en primer lugar bienes que como tales satisfacen necesidades del hombre, perfeccionándolo y al mismo tiempo que son comunes, o sea susceptibles de ser obtenidos y participados por todos en forma solidaria. En este sentido bien común se contapone a bien individual y aunque la idea es aplicable en forma análoga a todo bien común, remite principalmente al bien común general".

38. En consonancia con la posición adoptada por los jueces disidentes del caso CHA y la recurrente, esta Secretaría entiende por 'bien común' todo aquello que haga posible que toda persona desarrolle plenamente sus potencialidades tendiendo al logro de su propia perfección. Así, el 'bien común' consiste en la articulación y el equilibrio de los distintos intereses que la sociedad de hoy alberga, entre los que se incluye el reconocimiento de las diversidades que existen, y su armonización, en tanto y en cuanto tengan un objeto considerado como lícito y que no interfiera con la libertad y la diversidad de terceros.

39. Cabe señalar que ésta no es otra que la doctrina sentada por la Corte Interamericana de Derechos Humanos en la Opinión Consultiva N.º 5/86 ("La colegiación obligatoria de periodistas", Serie A, N.º 5, párrs. 66 y 67) —tema sobre el que volvió a referirse en el mismo sentido en la Opinión Consultiva N.º 6/86— cuando tuvo oportunidad de definir el contenido de la expresión 'bien común'. Esta Corte sostuvo que dentro del contexto de la Convención es posible entender el 'bien común' "como un concepto referente a las condiciones de la vida social que permiten a los integrantes de la sociedad alcanzar el mayor grado de desarrollo personal y la mayor vigencia de los valores democráticos. En tal sentido, puede considerarse como un imperativo del bien común y la organización de la vida social en forma que se fortalezca el funcionamiento de las instituciones democráticas y se preserve y promueva la plena realización de los derechos de la persona humana."

40. Asimismo, cabe recordar que en la reforma constitucional del año 1994, los constituyentes incluyeron como parte integrante del bloque de constitucionalidad a los principales instrumentos internacionales de derechos humanos, entre ellos, la Convención Americana sobre Derechos Humanos que contiene un artículo que hace referencia específicamente al 'bien común' al establecer que "Los derechos de cada persona están limitados por los derechos de los demás, por la seguridad de todos y por las justas exigencias del bien común, en una sociedad democrática" (artículo 32, inc. 2). Dada la expresa referencia al tema del bien común en el texto de la Convención que, huelga decir, es ahora parte integrante de la Constitución Nacional, debería recurrirse al último intérprete de la misma en busca de alguna pista orientadora sobre la cuestión.

41. Conforme a lo expuesto, entendido el 'bien común' como las condiciones de la vida social que permiten a los integrantes de la sociedad alcanzar el mayor grado de desarrollo personal y la mayor vigencia de los valores democráticos, cabe concluir que el otorgamiento estatal de la personería jurídica a una asociación que tiene entre los propósitos de su estatuto los de luchar para que el Estado y la sociedad acepten el travestismo como una identidad propia a fin de fomentar prácticas ciudadanas más democráticas e inclusivas que tiendan a la eliminación de la discriminación de la que fueron objeto históricamente en virtud de su orientación sexual y

aparición física, generar espacios de reflexión, educación e investigación tendientes a la difusión de la cultura democrática antidiscriminatoria en la que su identidad se encuentre libre de apreciaciones negativas y consecuentemente no sea estigmatizada y condenada a la exclusión y contribuir a la eliminación de los estereotipos que vinculan el travestismo a la violencia y a la prostitución como única alternativa de vida, se cifre perfectamente a dicha manera de interpretar bien común.

42. Más aun, el mismo concepto de 'bien común' público exige que el Estado apoye, promueva y facilite la creación de asociaciones que tienen como objetivo fundamental luchar por la no discriminación de grupos de ciudadanos históricamente excluidos de la arena social, política y económica, como es el caso de las minorías sexuales, en este caso más específicamente, travestis y transexuales.

43. Respecto del derecho a la libertad de asociación, cabe enfatizar que los beneficios que se siguen del hecho de que el Estado argentino reconozca la persona jurídica a un grupo de personas, sirven para promover y facilitar el ejercicio de tan importante derecho reconocido en el plexo constitucional. Concretamente, dichos beneficios se refieren a que la asociación tenga capacidad para adquirir bienes a cualquier título, esto es, por herencia, donaciones o legados (Código Civil, arts. 1806, 3734 y 3735). Por otro lado, la personalidad jurídica que el PEN acuerda también autoriza a los integrantes de una asociación a no responder por las deudas de ésta, cosa que no sucede en una simple asociación donde los asociados responden por dichas deudas de manera subsidiaria y accesorio (*cf.* Código Civil, art. 46 *in fine* y art. 1747).

44. Por consiguiente, teniendo en cuenta las distintas formas asociativas que establece el Código y cómo varía en cada una el régimen de responsabilidad patrimonial, el menoscabo más importante que implica para un grupo de personas que el Estado no les reconozca la personería jurídica, es la referida al régimen de responsabilidad patrimonial.

45. De aquí podría interferirse el avasallamiento al derecho de asociación reconocido en la Constitución Argentina (art. 14) y en los instrumentos internacionales de derechos humanos que gozan de jerarquía constitucional. Sin embargo, más allá de la viabilidad o no de este argumento, corresponde poner de manifiesto la violación al principio de igualdad y no discriminación que genera el no otorgamiento de la personalidad jurídica a una asociación que tiene como objeto luchar por la eliminación de la discriminación por sexo y orientación sexual en la sociedad.

46. Finalmente, en principio, las decisiones denegatorias de la autorización para funcionar como persona jurídica no pareciera ser incompatible con 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, aprobada por la Asamblea General en su resolución 53/144, de 9 de diciembre de 1998.

47. Entre sus postulados esta declaración establece en el artículo 5 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) a reunirse o manifestarse pacíficamente; b) A formar organizaciones, asociaciones o grupos no gubernamentales, y a afiliarse a ellos o a participar en ellos, c) A comunicarse con las organizaciones no gubernamentales e intergubernamentales".

48. A pesar de no contar con dicha personería, la ALITT, conforme al derecho argentino, todavía puede funcionar como una asociación simple. Así, invistiendo carácter de este tipo de asociación, puede ejercer los derechos mencionados en el artículo 5. El desmedro que sufre la ALITT por desconocérsela la personalidad jurídica consiste, por un lado, en que no podrá hacer uso de los beneficios patrimoniales mencionados anteriormente. Este tipo de avasallamiento, no pareciera estar contemplado entre los enunciados por la Declaración. Por otro lado, y fundamentalmente, el no otorgamiento de la personería a la ALITT implica la violación al principio de no discriminación.

49. En este sentido, cabe dejar en claro que la denegación de personería jurídica en el caso pone en juego no tanto la violación al derecho a la libertad de asociación, reunión y participación como la violación al principio de no discriminación, ya que la razón de dicha denegación sólo puede estar fundada en un ánimo discriminador en virtud de la orientación sexual de los miembros de la ALITT –como se dio también en el caso *CHA* mencionado.

### **Urgent appeal**

50. On 14 August 2006 the Special Rapporteur sent an urgent appeal to the Government, jointly with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, to bring to its attention the information about the situation of **L.M.R.**, a woman who was raped by her uncle in her home in La Plata, Buenos Aires province, on March 2006. L.M.R. has a mental disability: she is 19 years of age, but has a mental age of 8.

51. On 4 July, L.M.R. went to the Hospital San Martín de La Plata to voluntarily obtain an abortion. Under Argentina's Penal Code, abortion is illegal, but penalties for performing an abortion are suspended where a mentally disabled woman is pregnant as a result of a rape, and where her guardian or legal representative allows the abortion (art. 86). The director of the maternity ward was reportedly prepared to perform the abortion, since it fell within the limits of domestic law. While this procedure reportedly does not require judicial authorization in these circumstances, it is alleged that a judge for the protection of minors (Jueza de Menores) intervened and ordered the hospital to sign out L.M.R.

52. According to the information received, on 31 July, the Supreme Court of Buenos Aires province authorized the abortion. However, L.M.R. has reportedly not yet received an abortion. It is alleged that the Bioethics Committee of the hospital of San Martín claims that the procedure cannot be carried out beyond 20 weeks, and she is now between 20 and 22 weeks pregnant.

53. According to the information received, there are significant concerns about the physical and mental health of L.M.R.

### **Response from the Government**

54. By letter dated 25 September 2006, the Government replied to the communication sent on 14 August 2006. The Government confirmed that after the intervention of Inés Siro, the judge for the protection of minors, and two anomalous legal decisions in lower courts, L.M.R. was granted legal permission to have an abortion. The Government also confirmed that after the San Martín Hospital refused to perform the termination because of the late stage of pregnancy, the abortion

was performed at a private clinic funded by women's organizations. It was also stated that two members of Parliament had brought impeachment proceedings against Ms. Siro on account of her ultra vires intervention. The Government also explained that regulations for safe and voluntary abortions in situations not prohibited under the Penal Code had not been introduced. However, the Government stated that the Human Rights Secretariat of the Ministry of Justice would strongly recommend that the colleges of magistrates should implement measures to ensure that judges are regularly brought up to date on the laws governing abortion.

### **Observations**

55. The Special Rapporteur would like to thank the Government of Argentina for its responses to the Communication sent 16 May 2006 and 13 August 2006.

## **Bahrain**

### **Allegation letter**

56. On 13 June 2006 the Special Rapporteur has jointly with the Special Rapporteur on the independence of judges and lawyers sent an allegation letter to the Government, concerning Z.A., S.F.M., S.A.A.A.L., S.I.H. and S.A.A..

57. According to information received: Z.A. was regularly beaten by her husband, whom she married in 1992. In 2004, the couple's Filipina domestic worker alleged that the husband had repeatedly raped her and she had become pregnant as a result. The Jinai Court eventually convicted the husband for adultery, holding that use of force could not be proven, and sentenced him to one month of imprisonment. When Z.A. filed for divorce in the Sha'ria High Court (Jaffaria Department), the presiding judge, Naser Al-Asfur, reportedly only granted a divorce after she renounced any rights to alimony and signed over property to her husband. An appeal is pending in the Court of Appeal.

58. S.F.M. was married in 1994 at the age of 17 and had three children (now aged 8, 10 and 12) with her husband. Since 1999, the husband attempted to force her to have sexual relations with other men for money. She repeatedly reported this matter to the authorities, but the police refused to open a case against her husband, who is a police officer himself. In 2000, S.F.M. successfully filed for divorce in the Sha'ria High Court (Sunni Department) and was granted custody of her children. In 2003, a friend of the husband allegedly invited her to his house under a pretext. After she had entered the house, the husband allegedly arranged that police arrest her on charges of adultery. She spent 20 days in pre-trial detention before the charges were dropped. During her detention, the husband successfully asked for a provisional court order assigning custody over the children to him. The case is still pending in court and the children reside with the husband.

59. S.A.A.A.L. married her husband in 1996, at the age of 15 years, and has an almost 2-year old daughter with him. She filed for divorce in the Sha'ria High Court (Jaffaria Department) in 2003, because the husband allegedly drank, used marijuana and beat her during her pregnancy. The presiding judge reportedly told her that she has to renounce her rights to custody or alimony and sign over property to her husband before he could grant a divorce. A court clerk named Maky allegedly tried to exhort to have sexual relations with her under the guise of a temporary

marriage of convenience (Mutaa). In exchange he offered to intervene with the judge on her behalf.

60. S.I.H., a Bahraini national of Egyptian origin, married her husband in 1993 and had two children aged 13 and 11 with him. When the husband began to drink and failed to support the family, in addition to beating her, she filed for divorce in the Shari'a High Court (Jaffaria Department). The presiding judge reportedly tried to pressure her to renounce her rights to custody of her children, before granting a divorce. Initially she was allowed to see her children once a week, but this right was rescinded in 2004. The divorce case is still pending in court.

61. S.A.A. married her husband in 2000 and has a daughter aged 5 with him. She filed for divorce in Shari'a High Court (Jaffaria Department), with Judge Zakaria Al-Sadadi presiding. Custody for the daughter was temporarily assigned to S.A.A., but her husband was granted the right to take his daughter with him twice a week. It is alleged that the husband sexually abused his daughter on some of these occasions. Following one incident, the head of the Child Protection Committee in Bahrain reportedly issued a report providing support for the allegations. Notwithstanding this report, the authorities reportedly took a full five days to refer her daughter for examination by a medical doctor at the Criminal Directorate, who at this point only found some scarring on the daughter's thighs. Despite the allegations, the Shari'a High Court actually extended the husband's visiting rights to six hours a week. S.A.A.'s appeal against this decision was reportedly rejected on 9 May 2006.

62. Reportedly, Bahrain does not have a codified family law that stipulates clear and equitable norms on divorce or child custody. As a result, judges can decide cases according to their personal interpretation of the Shari'a and their interpretation reportedly often favors men. The Special Rapporteurs expressed their concern that a considerable number of women in Bahrain could be trapped in violent relationships, because they have to fear having to renounce child custody rights or property rights in order to be granted a divorce.

#### **Response from the Government**

63. The Government of the Kingdom of Bahrain replied on 21 August 2006 to the letter dated 16 June 2006 and informed the Special Rapporteur that the legislation of Bahrain guarantees women's rights in explicit provisions which ensure their enjoyment of all the political, civil, social, economic and cultural rights set forth in the Universal Declaration of Human Rights. The Constitution of the Kingdom furthermore recognizes a series of rights and obligations which guarantee women the attainment of their rights in society, particularly the right to equal human dignity and equality before the law, which is guaranteed under article 18 of Constitution in the framework of a system of government based on the separation of powers and the complete independence of the judiciary. Women are also entitled to a fair and impartial hearing, in accordance with the rules of law and justice, and to receive legal aid, if they cannot afford to pay for legal representation.

64. In addition, the Kingdom of Bahrain has ratified a number of international human rights treaties, in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which the Kingdom acceded in 2002 and which is an integral part of its domestic legislation.

65. The Kingdom of Bahrain, convinced of the need to establish a specialized, high-level institution to deal with women's issues, established the Supreme Council for Women in 2001 to act as a mechanism for the advancement of women in all domains. Since its inception, the Council has conducted studies on the status of women and has endeavoured to promote and protect women's rights. It drew up a national strategy for the advancement of women, in cooperation with all governmental and civil institutions, in order to support women, inform them of their rights, protect them, provide them with practical and vocational training, and empower them in every domain.

66. The Government noted that all the allegations contained in the Special Rapporteurs' letter actually refer to a series of cases before the Bahraini courts. All the defendants were the husbands of the complainants. The facts enumerated in the letter do not reflect the course of the actual proceedings.

67. However, the competent authorities in the Kingdom, i.e. the Ministry of Justice and the Department of Public Prosecutions, received a copy of the allegations for use as background to the cases and so that a decision can be taken on them by the competent authority, particularly the allegations relating to the situation of representatives of the judiciary. Another copy was sent to the Supreme Council for Women as the agency responsible for women's issues in the Kingdom. In any case, the latest developments in the cases referred to in the letter are outlined here below.

68. With regard to S.F.M., her lawyer in the case is called Abd al-Rahman al-Khurshim; the defendant (the husband) is called A.a.A.G.A. All the information contained in the letter is correct, except for the fact that S.F.M. filed an application for a judicial review, petition No. 189/2004, and that the hearing was scheduled for 5 September 2006. In the petition, she asked to be given back custody of her children after being acquitted on charges of adultery. It follows that the case is not closed, because a date has been set for the above-mentioned hearing.

69. S.A.A.A.L. obtained a divorce by agreement with her former husband, J.I.A.J. The case was settled and the court issued the dissolution document on 9 July 2006 based on the agreement reached by the two parties.

70. As for S.I.H., her lawyer in the case was Huda Sa'd Ahmad and the defendant (the husband) was A.a.J.A.a.Z. The competent court issued a divorce judgment on 18 January 2006 and the dissolution document, No. 1775/A.H. 1427, was issued without either party filing a petition for leave to appeal.

71. With regard to S.A.A., her lawyer in the case is called M.M. and the defendant (the husband) is called Mohammed A.a.S.K.a.S. The case file contains a series of annexed documents, referring to several complaints which the wife lodged with the police against her husband. The competent court wrote to the police asking them to send the relevant documentation in order to verify the wife's allegations and take a decision in the case. The fact that the husband had no prior criminal convictions was documented in the case file. The highest Shariah court set a date of 6 September 2006 for the hearing and notified both parties. It is worth mentioning that the reason for the delay in hearing the case is that the two parties usually had reach an agreement on numerous subjects and then went back on their decision.

72. The Government concluded that the cases forming the subject of this correspondence are individual cases which have received a fair and impartial hearing by the judicial authorities in the Kingdom. A copy of the allegations contained in the letter was received by the competent authorities and will serve as background to the cases. The competent authorities will take a decision on the allegations of concern to them, particularly those relating to the situation of judicial representatives.

73. These cases are governed by the relevant laws and provisions of the Shariah, which does not discriminate between the rights of men and women, as indicated in the introduction to this reply. Moreover, the Bahraini judiciary enjoys complete independence as one of the three powers of the State and in accordance with the principle of multiple centres of power which the Kingdom has embraced.

74. With regard to the subject of family law, the legislature is the body with competence for this matter. It has been examining this question for some time now with a view to guaranteeing the rights of everyone in the Kingdom.

#### **Urgent appeal**

75. On 21 November 2006 the Special Rapporteur has jointly with Special Rapporteur on trafficking in persons, especially women and children, sent an urgent appeal to the Government of Bahrain to bring its attention to the information received regarding E.Y.O., a 32-year old woman of Eritrean nationality.

76. According to information received, E. Y. O. was working in Bahrain as a migrant domestic worker. Allegedly, the son of her employer repeatedly raped and beat her and the family employing her restricted her freedom of movement, did not pay her and took away her passport. She finally managed to run away on 7 November 2006. She managed to temporarily find lodging with a friend who then asked her to leave since she had no legal papers. He called the police who took her to a women's detention centre in ISA Town. It is reported that the authorities in Bahrain did not take any steps against the son of the family she worked for. E. Y. O. has expressed fear that she may be deported to Eritrea and face persecution there.

77. Concern is expressed about the safety of O. and about the alleged lack of assistance provided to O., who could be a trafficking victim.

#### **Response from the Government to an allegation letter sent in 2005**

78. On 11 October 2005, the Special Rapporteur sent a letter of allegation concerning the alleged mistreatment of A.B.J., a migrant domestic worker from Indonesia working in Bahrain. The full details of the allegations submitted have been reflected in the Special Rapporteur's previous report on communications sent and received (E/CN.4/2006/61/Add.1).

79. By letter dated 13 December 2005,<sup>4</sup> the Government responded. The Government stressed the importance it attaches to human rights for citizens and migrants alike and highlighted various

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<sup>4</sup> The translation from Arabic became only available after the previous report on communications sent and received was finalized and the response is therefore reflected in this report.



international treaties ratified by Bahrain as well as a number of legal provisions, including the Labour Code, to protect the rights of migrants. The Government specified that domestic workers and persons of like status are not covered by the Labour Code, because of the special nature of their work. They are subject rather to the terms of the Civil Code.

80. The Government also informed that, in 2006, a total of 2,206 labour disputes were referred to the Labour Complaints and Disputes Department of the Ministry of Labour and Social Affairs. A total of 1,458 complaints were received from Bahraini workers, of which 722 were resolved and 736 were referred to labour tribunals. As for complaints from non-Bahrainis, a total of 748 were received, of which 245 were settled amicably and 503 were referred to labour courts. These figures refer to complaints from men and women. In 2002, the Ministry registered 2,269 disputes, of which 1,389 were made by Bahraini workers. A total of 790 were settled and 599 were referred to the courts. A total of 880 complaints were received from foreign workers; 293 disputes were resolved amicably and 587 were referred to the courts. In May 2003, 908 disputes were registered; 506 of them were complaints from Bahraini workers. A total of 257 were settled by the Ministry and 249 were referred to labour courts. There were 402 labour complaints from foreign workers during the same period; 123 were settled by the Ministry and 279 were referred to the courts.

81. Regarding the specific case raised by the Special Rapporteurs, the Government noted that A.B.J., an Indonesian domestic worker, was recruited by a manpower agency approximately one year prior to the response to work in the Kingdom of Bahrain under the terms and conditions applicable at the time. She was legally sponsored by a national of the Kingdom (a Bahraini) and was set to work for the sponsor's mother (an Egyptian).

82. Later, she submitted a complaint through the official channels (a police station), saying that she had not been paid, that she had been harassed by her employers and had sustained numerous physical injuries, including a fractured forearm. She provided medical reports to support her claim. The competent authorities subsequently launched an investigation and liaised with the Indonesian Embassy in the Kingdom on the follow-up to the case. The Department of Public Prosecutions investigated the circumstances of the case in accordance with the normal procedures. It then took the accused person into preventive custody.

83. The sponsor's mother (an Egyptian national) was charged with assault and inflicting multiple physical injuries. She was also charged with assault causing an illness lasting over 20 days (articles 302 bis and 339, paragraph 1, of the Criminal Code). A session was held on 10 December 2006 before the court with competence for the case (the Criminal Court).

84. The Government concluded that the case is governed by the relevant laws and legislative provisions, which, as stated in the introduction to this reply, do not distinguish between the rights of citizens and migrants and guarantee just punishment of offenders who are found guilty of wrongdoing. The Bahraini courts are completely independent, as one of the three powers of State and in accordance with the principle of pluralism embraced by the Kingdom.

#### **Observations**

85. The Special Rapporteur would like to thank the Government for its reply to her communication of 13 June 2006 containing information on four of the five cases raised. She

appreciates his Excellency's cooperation in this regard and welcomes the information that the allegation letter sent to her was forwarded to the competent authorities and that it will serve as background to the competent authorities which will take a decision on the allegations of concern to them, particularly those relating to the situation of judicial representatives. The Special Rapporteur would like to be informed about any further developments in these cases. She would also like to thank the Government for replying to her communication dated 19 September 2006.

86. The Special Rapporteur looks forward to a response with regard to the urgent appeal submitted on 21 November 2006 as well as information on the case of Z.A. submitted on 13 June 2006.

## **Bangladesh**

### **Allegation letter**

87. On 21 March 2006 the Special Rapporteur has together with Special Rapporteur on the sale of children, child prostitution and child pornography, sent an allegation letter to the Government concerning the gang-rape of 15-year old K.R.S. in Khidirpur Union-Basaudia-Lohajang within the Munshiganj District.

88. According to those allegations, on 1 November 2005, K.R.S. (second daughter of R.S. and L.R.S.), was gang-raped when she was walking home from school in Khidirpur Union-Basaudia-Lohajang within the Munshiganj District. After reporting the incident and indicating the names of the perpetrators to the police, she was arrested and imprisoned until 11 November 2005 without being provided with the reasons of her detention. After the rape, several members of the girl's community questioned one of the alleged perpetrators, who reportedly named all the other perpetrators, and recorded what was said. The recorded tape was then given to the police. It is reported that the police did not take the information on the tape into consideration in their investigations. One person was being prosecuted.

### **Allegation letter**

89. On 20 April 2006 the Special Rapporteur has sent an allegation letter to the Government concerning K.B.S., a 30-year old woman from a minority community living in Hogolpota village, Bagerhat district.

90. According to information received: On 30 October 2005, K.B.S. and her husband were on their way home, when six men allegedly blocked their way, tied the husband to a tree and then forced her into a field where she was allegedly gang-raped.

91. The victim sustained serious injuries to her genitalia. The victim filed a case under the Women and Child Repression Prevention (Revised) Act of 2003 at Sharankhola police station. Since then, the police has completed its investigations and submitted a charge sheet to the court, which only names two of the six alleged perpetrators: K.M., son of H.M., from Rajapur village and A.A., son of B.H., from Dakkhin Badhal village.

92. The remaining four alleged perpetrators were not charged and concern is expressed that this is related to their political connections. A.R. from Sharankhola, allegedly the primary perpetrator, is a member of the Dhansahor union council unit of the Bangladesh Nationalist Party (BNP). W.H., M.B., and A.N.I. (all from Sharankhola) hold the respective functions of president, general secretary and organizing secretary of the BNP Dhansahor union council unit. Sources also allege that the four men have repeatedly threatened the victim and successfully intimidated witnesses to withdraw their testimony against them.

### **Urgent appeal**

93. On 20 April 2006 the Special Rapporteur has together with Special Rapporteur on the sale of children, child prostitution and child pornography, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an urgent appeal to the Government to bring its attention to the following information:

94. Since mid 2005, there has been an ongoing conflict between the Bengali settlers and the Marma indigenous peoples in the Chittagong Hill Tracts, in the Southeastern part of Bangladesh. According to the information received, Bengali settlers have, with the support of the army, illegally and forcibly occupied titled indigenous peoples land. On 5 March 2006 Bengali settlers, with the support of the military, occupied land belonging to the Shishughar Buddhist Orphanage. On 3 April Bengali settlers, led by M., N.G.G. from Maischari, attacked the Marma indigenous peoples in the villages of Sa Prue Para, Joy Sen Para, Sapru Karbapara and Nuapara. The attacks left more than 30 casualties.

95. It is reported that when the Marma women opposed the incident, Bengali settlers ill-treated four Marma women including T.M., T.C.M., 18 years, and her mother P.M., 42 years. The incident was witnessed by Venerable S.M. who was consequently beaten to silence. It was reported that the Bengali settlers named A.M., B.I., K., S.A., A. and nine unknown settlers also raped T.C.M. and her cousin K.M., 18 years. When T.C.M. and her cousin K.M. were rescued, they were unconscious.

96. Furthermore, Bengali settlers allegedly gang-raped T.M., aged 16, and A.K.M., aged 20, at Sa Prue Karbari. The four raped girls are hospitalized at the Khagrachari Sadar Hospital. Furthermore, it is also alleged that 13 of the indigenous wounded in the said attacks were hospitalized in the Khagrachari Sadar Hospital, and 3 seriously wounded in the Chittagong Medical College Hospital. Among the wounded indigenous people are: 1) T.M.C. (30) from Nua Para; 2) J.M. (35) from Do; 3) S.P.M., from Sa Prue Karbari Para; 4) M.M. (30) from Sa Prue Para; 5) An unknown women; 6) K.M. (20), from Chaikla Prue Marma; 7) M.P.M. (50) from Sa Prue Para; 8) M.M. (26) from Chkara Karbari Para; 9) S.P.M. (65) from Joy Sen Para; 10) T.A.M. (Zunal Magh) (45) from Nua Para; 11) M.M. (40) from Sa Prue Para; 12) P.M. (42) from Sa Prue Para; 13) K.J.M. (18) from Sa Prue Para; 14) A.P.M. (40) from Joy Sen Para; and 15) M.M. (70) from Maischari. Some of the wounded indigenous people are in army custody, including: 1) R.M. (30) and 2) M.T.M. (30), both from Maischari. Furthermore, one Buddhist monk is still missing and the house of M.M. (65) in Sa Prue Karbari Paraw as destroyed and looted in the attacks.

### **Urgent appeal**

97. On 31 May 2006 the Special Rapporteur has together with Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government regarding A.R., a lawyer, his wife S.S.S. and his legal assistant N.A.A.

98. According to the information received: On 12 March 2006, S.S.S. was taken into custody and beaten by the police in Dhaka. She was pregnant at that time, but has since lost her child. She filed a complaint together with her husband against the police officers. Since then, she and her husband are receiving threats. In particular, on 24 May 2006, A.R. was stopped by a group of armed and unidentified persons. The attackers held a pistol to his chest, questioned him about his identity and threatened to shoot him. That same morning, while A.R., N.A., went to collect documents from the record office regarding S.S.S.'s court case, three persons confronted him and inquired if he worked for A.R. and where they could find him. The men followed him for the rest of the day trying to prevent him from obtaining the documents he required from the record office. On 23 May 2006, an unidentified person called A.R. and warned him against pursuing legal proceedings against the police. The caller said if he did not do this, he and his family would pay the ultimate cost.

### **Follow-up allegation letter**

99. On 21 July 2006 the Special Rapporteur has together with Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the question of torture, sent an allegation letter to the Government concerning S.S.S.

100. According to information received: On 12 March 2006, several opposition political parties held a demonstration which moved in the direction of the Election Commission Office. On the way, at Mirpur Road, in between Manik Mian Avenue and Road 27 in Dhanmondi Residential Area, the police erected a barricade to block the protesters.

101. S.S.S. was in this vicinity at the time as she was going to collect her son from a school that is located in the area. At approximately 12.30 pm, a group of demonstrators, belonging to an opposition political party, passed by school. The police fired tear gas and water canons at the demonstrators and beat them with sticks, canes and iron rods. S.S.S., who had been waiting in front of the school, took shelter inside a private hospital opposite the school. Police forcibly removed her from the clinic and placed her with the arrested demonstrators. S.S.S. told the police that she was pregnant and a diabetic patient. The Deputy Commissioner of Police (West Zone), K.M., reportedly accused her of lying. The Deputy Commissioner of Police (South Zone), M.H., and the Deputy Commissioner K.M. allegedly ordered their subordinates to break S.S.S.'s hands and legs. Male police officers placed their hands on S.S.S.'s lower abdomen to check whether she was pregnant. They tied a rope around her abdomen and forcefully pulled on both ends of the rope. Thereafter they forced her into a prison van. Inside the van, policemen walked on her body and kicked her genitalia as well as her lower abdomen. After S.S.S. fainted she was discarded on the street. Santa suffered severe injuries to her thighs, lower abdomen, back, waist, hip and other areas of her body. She also suffered two fractures, one in her right elbow and the other in the small finger on her right hand.

102. S.S.S. lodged a complaint against the alleged perpetrators at Mohammadpur police station but the police refused to record the case. On 14 March 2006, she filed a case (CR Case No. 312/06) with the Chief Metropolitan Magistrate's Court in Dhaka against Deputy Commissioner M.H., Deputy Commissioner K.M., police constable R.A., and a number of other police officers under the Penal Code. On March 19, S.S.S. filed a second case (No. 23/06) against the alleged perpetrators under sections 10/30 of the Women and Child Repression Prevention (Special Provision) (Amended) Act 2003. According to the latest information received, neither case has led to a conviction of any of the alleged perpetrators. Over recent months, unknown perpetrators have on several occasions threatened S.S.S. and her husband A.R., who is also her lawyer, with death if they continue to pursue criminal action against the alleged perpetrators.

### **Allegation letter**

103. On 17 November 2006 the Special Rapporteur has together with Special Rapporteur on the question of torture sent an allegation letter to the Government concerning M.K., a 14-year old girl, and her brother R.I., both residing in Uttar Chandani Mahal, Dighalia police station section, Khulna district.

104. According to allegations received, on 23 July 2006, at around 1.30 p.m. Assistant Sub Inspector M.I., who is the second-in-command of the Senhati police outpost under the Dighalia police station in Khulna district, and Police Constable (No. 1632) S.M. arrived at M.K.'s home. Assistant Sub Inspector M.I. entered M.K.'s room and attempted to rape her. She managed to resist until her brother R.I. and various other family members arrived to help her. In response, the policemen beat M.K. and hit R.I. with a bamboo stick, a rifle butt and a chain, before they arrested him and took him to Senhati police outpost. A.H., commanding officer of the Senhati police camp, and Assistant Sub Inspector M.I. then demanded 10,000 Taka from R.I.'s family. They threatened that R.I. might be "killed in crossfire" if the family failed to pay the money. When the family only managed to raise 5,000 Taka, policemen beat R.I. with a stick and a rifle butt causing fractures of his left hand and right leg. They also poured hot water in his nose. He can no longer walk properly or work to support his family.

105. On 24 July 2006, the police lodged a criminal case against R.I. and other relatives that protected M.K. from the attempted rape. On 25 July 2006, the local Magistrate's Court issued a pre-trial detention order against Rafiqul Islam despite his critical medical condition. On 24 October 2006, R.I. was released against bail. The charges against him are pending. M.K. told the public about the events in a press conference held at the Khulna Press Club on 28 July 2006. On 30 July 2006, she also lodged a criminal case against Assistant Sub Inspector M.I. and Police Constable S.M. (No. 340/2006) with the Magistrate Court in Khulna under the Women and Children Repression Prevention (Special Provision) Amendment Act 2003.

106. On 23 September 2006, A.S., a member of Ward 4 of the Senhati Union Council, told M.K. to withdraw the case. A.S. also threatened her and her family with "Remember, the police lodged a case against you, in which your brother is detained in Khulna jail. If you don't withdraw the case against the police, you will be in trouble. Fighting against the police is very difficult!" He further suggested that the family come to a "solution" without fighting against the police. Since then, A.S. and Assistant Sub Inspector M.I. have reportedly repeatedly attempted to

intimidate M.K. by threatening to ensure that her brother would be convicted on trumped-up charges.

107. The Special Tribunal of Women and Children Repression Prevention, which has jurisdiction over the criminal case against Assistant Sub Inspector M.I. has so far not taken any substantive action. In a court hearing that took place on 28 September 2006, Judge B.H. reportedly refused to consider the merits of the case and rescheduled the case to 30 November 2006.

#### **Follow-up urgent appeal**

108. On 22 December 2006 the Special Rapporteur has sent an urgent appeal to the Government regarding the case of M.K., a 14-year old girl, and her brother R.I., both residing in Uttar Chandani Mahal, Dighalia police station section, Khulna district. In a joint letter, dated 17 November 2006, receipt of which the Government have kindly acknowledged by letter dated 22 November 2006, the Special Rapporteur informed the Government that, on 23 July 2006, Assistant Sub Inspector Mr. M.I., allegedly tried to rape M.K., who resisted until her brother R.I. and other family members came to her assistance. M.K. and R.I. were subsequently allegedly subjected to threats, and R.I. was reportedly arrested and tortured by police before being released on bail on 24 October 2006.

109. According the latest allegations received, the police authority assigned a female police officer, R.B., Assistant Superintendent of Police of Khulna, to conduct an investigation into the alleged attempted rape of M.K. In an investigation interview, held at Khulna Police Office on 12 November 2006, R.B. reportedly intimidated and rebuked M.K., her mother R.K.N. and her brother R.I., for filing charges against Assistant Sub Inspector M.I. She reportedly did not explore the facts of the case. There are concerns that R.B. may receive instructions from Assistant Sub Inspector M.I. The Special Tribunal on the Repression of Women and Children assigned M.I., a former Superintendent of Police in Khulna, to investigate the alleged rape. However, there are concerns that M.I. is failing to carry out an independent investigation.

110. On 30 November 2006, M.K.'s lawyer, M.Y.S., submitted a petition to the Court, noting the continuous failure of the police and the former Superintendent of Police in Khulna, M.I., to investigate the case with due diligence. The judge, who responded to the petition, ordered a judicial probe. However, no magistrate has been assigned to investigate the case.

111. On 7 December 2006, at about 2 a.m. Assistant Sub Inspector M.I. along with 15 to 20 unidentified policemen raided the house of M.K. and R.I. and attempted to arrest R.I. The police also raided the houses of R.B., A.B. and A.B., who were witnesses in the case of attempted rape lodged by M.K. All of the said persons allegedly face charges for assaulting police, when they intervened to prevent the attempted rape.

112. On 10 December 2006, at about 1 a.m. Assistant Sub Inspector M.I. raided the houses of M.K. and R.K. and tried to arrest them again. He also attempted to arrest H.S., a grocer in the village and maternal uncle of M.K., whose wife is one of the witnesses in the attempted rape case. All the witnesses are currently hiding in order to avoid being arrested.

**Observations**

113. The Special Rapporteur regrets that the Government of Bangladesh, while formally acknowledging receipt of each communication sent, did not reply to the substantive concerns raised in any of her communications in 2006.

114. Pending these replies and without making any determination on the facts of the cases transmitted, the Special Rapporteur deems it appropriate to address the following observations:

115. The Special Rapporteur encourages the Government to exercise due diligence in the investigation, prosecution and punishment of all individuals who allegedly took part in the reported violations, both at the decision and implementation level, and to keep her informed of any such developments.

116. In this regard the Special Rapporteur would like to recall some of the findings and recommendations made by the previous Special Rapporteur, following her visit to Bangladesh, Nepal and India in 2001. In her report (E/CN.4/2001/73/Add.2), Ms. Coomaraswamy highlighted that corruption in the police seems a significant problem in Bangladesh, and recommended that there should be a clear direction from the top of the police hierarchy that such behavior will not be tolerated and police officers who engage in such activity should face severe consequences. Furthermore the report stressed (para.163) that there should be seminars and workshops with judges in the region to increase their awareness on issues relating to violence against women. In paragraph 165 it was stated that witness protection schemes should be set up for women victims.

117. The reported cases suggest that these recommendations have not been implemented and the Special Rapporteur urges on the Government to address as a matter of priority existing patterns of corruption and impunity that appear to exacerbate violence against women in Bangladesh.

**Bulgaria****Allegation Letter**

118. On 25 July 2006 the Special Rapporteur has together with Special Rapporteur on the sale of children, child prostitution and child pornography and Special Rapporteur on trafficking in persons, especially women and children, have sent an allegation letter to the Government to bring its attention to the information concerning the trafficking of newborn infants from Bulgaria to Greece.

119. According to the information received, it is alleged that pregnant women, most of them from the Roma community in the region of Burgas in eastern Bulgaria, and many of them unemployed and living in harsh conditions, are induced by members of organized crime to come to work to Greece, being promised employment and good salaries. It is reported that instead, these pregnant women end up in small cities throughout Greece, where they are held together in apartments for the remainder of their pregnancy, before delivering at local hospitals, where, with the complicity of doctors, midwives and other hospital staff, their newborn babies are taken away

from them and sold by organised crime members with the assistance of lawyers for up to 30,000 euros.

120. It is alleged that after having given birth in Greece, the women are sent back to their hometowns in Bulgaria and receive 1,000 euros per child.

121. Reports also alleged that little progress has been made by Greek and Bulgarian authorities in investigating the trafficking and sale of children taking place between the two countries.

### **Observations**

122. The Special Rapporteur regrets that the Government has not replied to her communication sent on 25 July 2006.

123. The Special Rapporteur would like to urge both the Government of Bulgaria as well as the Government of Greece to take necessary steps and address this concern effectively and through cooperation. According to article 35 of the Convention on the Rights of the Child, Bulgaria is obliged to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form". Article 36 of the Convention requests States parties to protect children against all other forms of exploitation prejudicial to any aspects of children's welfare.

124. The Special Rapporteur welcomes information received from the Greek Government that the Hellenic Police Headquarters are already cooperating with their Bulgarian counterpart. The Special Rapporteur would like to reiterate her interest in receiving a reply also from the Government of Bulgaria in regard to the allegations submitted.

## **China**

### **Allegation letter**

125. On 19 December 2005, the Special Rapporteur jointly with the Special Rapporteur on the human rights of migrants, Special Rapporteur on the question of torture and the Special Rapporteur on trafficking in persons, especially women and children, sent a letter to the Government concerning allegations of trafficking and sexual exploitation of female citizens of the Democratic People's Republic of Korea in the Peoples Republic of China, especially in Jilin Province.

126. According to information received there are at least 50,000 Democratic People's Republic of Korea citizens who only have irregular visa status in the Korean Autonomous Prefecture of Yanbian (Jilin Province), which borders the Democratic People's Republic of Korea and is home to about one million Chinese citizens of Korean ethnicity. While a considerable number clandestinely crossed the international border into China to escape persecution many others fled the poor socio-economic situation.

127. About half of those who cross the border are women. After arriving in China, many are trafficked and forced to marry or become the concubines of Chinese men. Human traffickers systematically target the women, who are usually hungry and desperate, by approaching them in the border region and promising them food, shelter, employment and protection. Once the



traffickers have gained the women's confidence, the women are lured to an apartment, confined and then sold to local men. The buyers often lock their victims in the house, tie them up or take away their clothing to prevent them from escaping. In many cases, the women are also physically abused and raped.

128. Some women from the Democratic People's Republic of Korea are also trafficked into the sex industry in Jinlin province and other parts of China. They are forced to prostitute themselves in brothels, which are often disguised as karaoke bars.

129. Women from the Democratic People's Republic of Korea with an irregular visa status are extremely vulnerable to trafficking since the Chinese authorities have reportedly been instructed to arrest and deport Democratic People's Republic of Korea citizens against their will, if they do not have a valid residence permit. China reportedly considers these persons to be irregular migrants who cross the border only for economic reasons. This deportation policy has been adopted despite the fact that Democratic People's Republic of Korea citizens face detention under cruel, inhuman and degrading conditions, ill-treatment and torture as well as, in extreme cases, summary execution in the Democratic People's Republic of Korea. Human traffickers are well aware of this deportation policy and often manage to subdue their victims by threatening to report them to the authorities, if they resist.

### **Urgent appeal**

130. On 1 February 2006 the Special Rapporteur has jointly with Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the question of torture, and Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the government of China concerning M.H., a woman of Shanghai. She has been the subject of previously transmitted communications (see E/CN.4/2005/62/Add.1, para. 296, and a communication dated 5 January 2006). M.H. was interviewed on 24 November 2005 during the recent mission of the Special Rapporteur on the question of torture to China.

131. According to the recent allegations received: on 15 January 2006, M.H. had traveled to Beijing with her daughter to take part in an unofficial memorial service marking the first anniversary of the death of former Chinese leader Zhao Ziyang. On 24 January, they were detained by four Shanghai police officers at their hotel in Beijing. According to her daughter, the police treated M.H. roughly, lifting her in an arm-lock and leaving her with bruising to her neck, arms and legs. The police took them to another hotel where Shanghai Residents' Committee officials were waiting to take them back to Shanghai by train. When the train arrived in Shanghai early the next day, M.H.'s daughter was released but M.H. was taken to Daqiao Police Station, Yangpu district. She was held there for questioning for 24 hours. The next morning, M.H. was able to telephone her husband, W.X.. She told him that she was being taken away from the police station by Yangpu district Residents' Committee officials but that she did not know where. He then heard M.H. scream and the line went dead. W.X. immediately telephoned the district Residents' Committee to find out where his wife was being taken, but they first denied that they were holding her. After repeated calls, the committee secretary confirmed that M.H. was "in their hands" and that they wanted to "educate her" because her protests about human rights violations were creating "social instability". They have refused to indicate where she is detained and her family has not had access to her.

132. With respect to her detention as alleged in the 5 January 2006 letter, further information received indicates that M.H. was detained by seven Residents' Committee officials in a Shanghai hotel from 3-6 January. The officials reportedly beat her several times, grabbed her breasts and prevented her from sleeping during this period.

133. Grave concern is expressed that her detention, reported ill-treatment and repeated harassment may represent an attempt to prevent her from raising human rights concerns. Furthermore, in view of her alleged detention in an unknown location, concern is expressed that she might be at risk of torture and ill-treatment, particularly in light of previous allegations of ill-treatment.

#### **Response from the Government**

134. By letter dated 14 June 2006 the Chinese Government replied noting that it has carefully examined the matters referred to in the communications and informed that: M.H., female, born 9 December 1961, ethnic Han Chinese, lower secondary school education, currently unemployed. On 10 January 1991, following appraisal by the Ministry of Justice economic research assessment office, M.H. was assessed as suffering from a personality disorder, but still having civil responsibility and competence to take civil law acts.

135. On 17 January 2006, M.H. and other persons assembled a crowd in a public area in Chongwen district in Beijing, thereby disturbing the peace. Pursuant to the provisions of article 34 of the regulations on punishments relating to the maintenance of law and order, the Yangpu office of the Shanghai public security bureau, acting in accordance with the law, served a summons on M.H. for a public order offence, for the period from 7.45 a.m. on 25 January 2006 to 7.45 a.m. on 26 January. Upon expiry of this period, no further measures of restraint were applied against M.H. and, in the course of this process, all her lawful rights were fully upheld, and the allegations that she was subjected to beatings have no foundation in fact.

#### **Allegation Letter**

136. On 24 March 2006 the Special Rapporteur has jointly with the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on the sale of children, child prostitution and child pornography, sent an allegation letter to the Government concerning the forced repatriation of a female national of the Democratic People's Republic of Korea by the People's Republic of China on 28 February 2006.

137. According to information received: Six years ago, M. H., the woman referred to above, and her one-year-old daughter, were sold for 3,000 RMB to a Chinese man, who she was forced to marry. The woman became pregnant soon thereafter and gave birth to a second daughter named K.Y. It is reported that the mother was arrested by a Chinese police raid squad at 11.30 pm on 25 February 2006 and handed over to the Democratic People's Republic of Korea security police three days later.

138. Concern is expressed that the woman may face harsh punishment since she had already been deported on two previous occasions, but managed each time to return to her children in China. In this context, we also wish to recall our communication of 19 December 2005, in which we expressed our deep concern about the trafficking and sexual exploitation of women from the

Democratic People's Republic of Korea and the cruel and inhuman punishment Democratic People's Republic of Korea nationals face in their country, if they are deported by Your Excellency's Government. The Special Rapporteurs are also concerned about the situation of M.H. and her older sister since they are now left alone with their father who reportedly often beats them in a drunken state.

139. Reportedly, the deportation case referred to above is not a singular incident. In cities near the border, including Y. and L., an intensified information exchange between Democratic People's Republic of Korea and Chinese authorities on Democratic People's Republic of Korea defectors has reportedly led to an increase in deportations of Democratic People's Republic of Korea nationals. Chinese police reportedly receive a salary bonus of 2,000 RMB for every arrest of a suspected defector from the Democratic People's Republic of Korea.

140. We appealed to the Government not to deport citizens of the Democratic People's Republic of Korea and to protect them from all forms of trafficking, exploitation and abuse.

### **Response by the Government**

141. By letter dated 14 June 2006, the Government provided me with the following information: regarding the communications of 24 March 2006 and also 19 December 2005.

142. Since the letter refers only to a child "J.Y.", born of a mother from the Democratic People's Republic of Korea and a Chinese father, and mentions the time that the mother was apprehended and repatriated, but provides no indication of her full name, age, place of entry into China, place of residence, border-crossing point where she was repatriated or details of the Chinese father, it is very hard for the Chinese authorities to trace her. According to investigations conducted by the Jilin and Liaoning public security authorities, the Chinese authorities did not apprehend or repatriate any illegal immigrants from the Democratic People's Republic of Korea during the last ten days of February 2006 whose description matches that of J.Y.'s mother.

143. The letter [of 19 December 2005] alleges that 50,000 illegal immigrants from the Democratic People's Republic of Korea have been detained in Jilin in the Yanbian Korean Autonomous Prefecture, which is a wild exaggeration. As a consequence of the improved economic situation in the Democratic People's Republic of Korea and the strengthened controls exercised over the frontier region by China and the Democratic People's Republic of Korea, the number of Korean illegal immigrants entering China is steadily decreasing. In accordance with the law, the Chinese Government guarantees the lawful rights and interests of foreign citizens within its territory. Regardless whether these people have entered the country in the normal fashion or have crossed the frontier illegally, their lawful rights and interests are equally protected under Chinese law. With regard to the issue of the illegal entry into China of citizens of the Democratic People's Republic of Korea, the Chinese Government invariably proceeds in an appropriate manner, consistent with both domestic and international law and in observance of humanitarian principles. In this process, the Chinese police authorities enforce the law in an impartial manner and there are no cases of commissions being paid for the repatriation of citizens of the Democratic People's Republic of Korea who have illegally entered China and have been apprehended.

144. The Chinese Government and the public security authorities always attach great importance to safeguarding the lawful rights and interests of women and children, and countering any kind of activities which infringe the rights and interests of women and children. They are consistently and indefatigably working to crack down with severity on any illegal activities involving trafficking in women and children. Starting this year, as a consequence of the increase in contacts between China and foreign countries, offences involving trafficking in women and children are now starting to occur in China as well. The Chinese public security authorities take a very serious view of this and have increased their preventive measures, taken stronger action to combat such offences, stepped up cooperation with police forces in all the other countries involved and cracked down with severity on Chinese and foreign offenders who traffic in women and children. Persons profiting from the abduction and trafficking of women and those involved in rape, ill-treatment and unlawful detention of others are charged, in accordance with the Chinese Criminal Code, with the offences of abducting and trafficking in women and children, rape, inflicting injury, unlawfully detaining others and other associated offences. At the same time, the authorities attach high importance to efforts to protect the rights and interests of victims, ensuring that they receive personal care and consideration, and are actively assisting foreign women and children who have been rescued from such abusive practices, endeavouring to ensure the personal safety and physical and mental health of victims.

#### **Urgent Appeal**

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

146. According to the new information received: On 24 November 2006 G.H. was beaten by members of the State Security police who had been following her movements and keeping her under surveillance. It is reported that G.H., her 13 year old daughter and her mother have been constantly followed by police for approximately three months. The incident reportedly took place on a street in Beijing (Jingsong Road, near the Lidu Hotel on bus route 408), after G.H. told three police officers (two male, one female) to stop following her and her children. As a result of the beating by the two male police officers, G.H. is reported to have loosened teeth, a

bleeding mouth and gums, her fingernail on one hand completely torn off and her leather clothing ripped into pieces.

147. It is further reported that G.Z. and G.H.'s 13 year old daughter, G., has also been harassed by the State Security Police who accompany her at all times, including while she is in school. It is reported that they follow her to her classroom, in the school corridors and even to the bathroom, which makes her educational environment difficult. Furthermore, on 21 November, it is reported that Beijing police showed their badges and attempted to pick up Tianyu, their 2 year old son, but his kindergarten teacher refused to comply. It has also been reported that G.H.'s 70 year old mother is also tailed by police if she leaves the house.

148. On 12 October 2006, G.Z. was formally charged with "inciting to subvert the State". It is reported that on 6 October 2006, G.H.'s birthday, she was allowed to see her husband at the Beijing No. 2 Detention Centre where they were watched and interrupted by police officers throughout the visit which lasted for approximately 20 minutes. However sources indicate that G.Z. has still not had access to his lawyer M.S. despite the recent discovery of his current whereabouts, as the authorities have reportedly stated that his case concerns "State secrets". Prior to 6 October 2006 he had allegedly been held incommunicado since 15 August 2006 when he was arrested without a warrant at his sister's house in Dongying City in Shandong Province, by more than 20 plainclothes police officers from the Beijing Public Security Bureau. According to reports the official Xinhua News Agency released a statement on 18 August 2006 stating that G.Z. had been arrested "on suspicion of breaking the law" however details of the alleged crime he had committed were not provided.

#### **Urgent appeal**

149. On 21 December 2006 the Special Rapporteur has jointly with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government regarding C.G., a 34 year old blind self-taught human rights lawyer in Linyi, Shandong province, and his wife Y.W., his lawyers L.J. and L.F., a member of his defense team, T.B., and witnesses to his trial, - C. Gengjiang, C. Guangdong, C. Guangyu and C. Guanghe.

150. C. Guangcheng has a long history of campaigning for the rights of farmers and the disabled. He assisted villagers in solving drinking water pollution problems when he was attending Najing Chinese Medicine University in 2000. He created and ran the "Rights Defense Project for the Disabled" under the auspices of the Chinese Legal Studies Association between 2000 and 2001. Since 1996, he has provided free legal consultation to farmers and the disabled in rural areas. In 2004, he ran a "Citizen Awareness and Law for the Disabled Project". In April 2005, C. Guangcheng and Y.W. began to investigate villagers' claims that Linyi City authorities were employing extensive violence in implementing government birth quotas. The first report was published by them on 10 June 2005 through the Citizens Rights Defence Network (gongmin weiquanwang) and they brought law suits against officials involved.

151. C. Guangcheng has been the subject of four previous communications to your Government, the most recent of which were sent by the Special Rapporteur on the independence

of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders dated 1 December 2006, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 14 July 2006. Previous communications were also sent on 7 April 2006 by the Special Representative on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture, on 31 October 2005 by the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences and Special Representative of the Secretary-General on the situation of human rights defenders, and on 19 September 2005 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders.

152. We are also in receipt of your Government's replies dated 12 December 2005, 14 June 2006 and 3 October 2006 (awaiting translation). Your Excellency's Government states that "(i)n dealing with Chen and his associates, the public security authorities acted in compliance with the law, in remanding them in custody or holding them for questioning. Throughout this period their lawful rights were fully protected and there is no substance to the allegation that C.G. was subjected to beatings and placed under house arrest." While we welcome your Government's observations, we are afraid that they do not alleviate our concerns with respect to this case, particularly so in the light of consistent reports that a number of individuals involved in his trial have allegedly been targeted by the security forces including his wife, his lawyers, a member of his defense team and witnesses to his trial.

153. According to new information received: On 27 November 2006, C. Guangcheng's retrial before the Yinan County People's Court lasted approximately 10 hours. It is reported that on 1 December 2006, he was sentenced to four years and three months' imprisonment for "gathering crowds to disrupt traffic" and "intentional destruction of property".

154. According to reports, C. Guangcheng's wife, Y.W., has been under de facto house arrest from 12 August 2005 until 25 November 2006. Since then, she had been continuously followed by local security personnel and persons in civilian clothes believed to have been hired by the police. On 28 November 2006, around midday, she was arrested by members of the Yinan County Public Security Bureau and detained for questioning. Their one-year-old child was also taken but was sent home later that day. Approximately eight hours later, Yuan Weijing, was dragged out of police car and left in a barely conscious state on the side of the road near her village. She was taken to the Mengyin County Menglianggu Hospital where she was treated for extreme trauma however she was accompanied by up to 20 policemen as an order of "residential surveillance" had been issued while she was in detention. She is also suspected of committing "gathering crowds to disrupt traffic" and for "intentional destruction of property".

155. Furthermore it is reported that the local authorities have intimidated witnesses and allegedly withheld evidence in order to prejudice C. Guangcheng's retrial.

156. It is further reported that four other key witnesses in the aforementioned trial have been subject to police harassment in relation to the most recent trial and were subjected to torture in order to provide false testimony against C. Guangcheng in his previous trial.

157. According to reports, C. Gengjiang was detained on 26 November 2006 and held until after the hearing had taken place. He was allegedly forced to sign papers in which he agreed not to participate in the case. On the same day, C. Guangdong and C. Guangyu reportedly disappeared after they had agreed to testify on behalf of the defence. Later the same evening, C. Guanghe was allegedly abducted by undercover police officers as he was on his way to meet with L. Fangping regarding the upcoming trial in which he was scheduled to testify the following day. He was reportedly formally arrested on 28 November but his family was not informed of his arrest or his whereabouts until 3 December 2006. Previously, it is alleged that C. Guanghe was detained and tortured before the first trial by members of the Yinan police in order to procure a false confession and to testify against C. Guangcheng. He was convicted on the basis of the false confession but granted a suspended sentence. It is feared that his recent detention may be related to the fact that that he has submitted written testimony stating that his prior evidence had been coerced through torture.

158. Members of C. Guangcheng's defence team have also allegedly been harassed, including his lawyers L. Jinsong, L. Fangping and T. Biao. The two lawyers were apparently prevented from interviewing witnesses and obtaining further evidence for the retrial. On 27 November 2006, as the trial was taking place, T. Biao was reportedly detained for five hours during which he was allegedly pushed to the ground by six or seven policemen who held him down while they searched him. They also apparently searched his bags and computer and confiscated his mobile phone.

159. Previously it had been reported: On 12 August 2005, C. Guangcheng and his wife Yuan were put under de facto house arrest. On 25 August 2005, C. Guangcheng evaded the police surrounding his village and went to Shanghai and Nanjing, then Beijing to seek help from lawyers. On 6 September 2005 he was detained at the house of a friend in Beijing by six men who said they were public security bureau (PSB) officers. He was held overnight in a hotel and the head of the Linyi PSB and the Deputy Mayor of Linyi came to see him in the morning. The Linyi PSB head told C. Guangcheng he was suspected of violating Article 111 of the CCC (illegally providing intelligence to foreign countries), for which the maximum sentence is life. However, no one produced an arrest warrant justifying his detention and the Linyi PSB men coercively took C. Guangcheng back home.

160. C. Guangcheng was placed under house arrest without any order to that effect. On 9 September 2005 his landline and mobile phone services were cut off, and his computer was seized. On 23 September 2005, PSB officials searched his house without producing a search warrant.

161. On 4 October 2005, Beijing law lecturer X. Zhiyong and lawyers L. Fangping and L. Subin attempted to visit C. Guangcheng but they were stopped on their way to his house. C. Guangcheng reportedly managed to leave his house and spoke with them briefly but was then forcibly returned and beaten by men surrounding his house. The lawyers tried to approach C. Guangcheng's house but were physically prevented. X. Zhiyong and L. Fangping were also

beaten. The three lawyers were then taken to Shuanghou Township Police station where they were interrogated until the following morning. They were advised that C. Guangcheng's case involved "State secrets" and were escorted back to Beijing.

162. On 24 October 2005, two other friends of C. Guangcheng from Beijing went to visit him. As C. Guangcheng tried to greet them, he was stopped and beaten by around 20 men surrounding his house. They beat C. Guangcheng with fists and sticks, knocked him down several times and kicked him. C. Guangcheng's request to seek medical attention was denied by the men who beat him and put his house under surveillance. There were a number of eye witnesses on the scene. The visitors were escorted away.

163. C. Guangcheng's wife, Y. Weijing, had also been prevented from leaving the house. It is also reported that she was beaten when she left the house to greet visitors on 27 December 2005.

164. On 30 October 2005, C. Guangcheng's lawyer filed a lawsuit on his behalf at the People's Court of Yinan County against two Shuanghou Township officials with intentional injury for their involvement in beating him outside his house on 24 October 2005. The two officials are alleged to head the group of more than 20 men who watched C. Guangcheng and Y. Weijing's house. It is reported that to date the court has ignored C. Guangcheng's suit.

165. With respect to the 'traffic' incident about for C. Guangcheng was eventually charged, on 11 March 2006, C. Guangcheng reportedly marched with other villagers to protest the beating of a villager. Several dozen police blocked their way and surrounded them on national highway 205, thereby causing a traffic disruption. C. Guangcheng was taken by Yinan County police from his house to the Yinyan Detention Centre without an arrest warrant. There he was held incommunicado for 89 days until 10 June 2006.

166. According to reports, C. Guangcheng's lawyers collected written testimonies from village witnesses, who were also detained and then released on bail. These villagers were reportedly forced to confess or provide incriminating false information against C. Guangcheng. They have stated that police used various torture methods at the detention centre in order to elicit confessions, such as tying them up to chairs with chains, depriving them of sleep for up to 15 days and withholding food and water.

167. On 10 June 2006, C. Guangcheng was formally detained on suspicion for "gathering crowds to disrupt traffic" and "intentional destruction of property". On 21 June 2006, the Yinan PSB issued an arrest warrant for C. Guangcheng No. 193 (2006). On the same day, C. Guangcheng's lawyers were allowed to visit him for the first time in three months. However, when they asked where he had been detained during those three months, the prison guards interrupted their discussion, preventing C. Guangcheng from answering the question. His family has not been allowed to visit. His wife remained under house arrest.

168. On 22 June 2006, one of C. Guangcheng's lawyers, L. Jinsong, was taken into police custody for questioning. On 24 June 2006, two lawyers, Jinsong and Subin tried to visit Y. Weijing but were stopped outside their house and beaten by men enforcing the residential detention of Y. Weijing.



169. On 27 June 2006, lawyers L. Jinsong and L. Subin attempted again to see Y. Weijing (to seek medical parole for Chen Guangcheng), but were also harassed by persons in the village, while the police refused to intervene. Around 20 men turned over their car (while L. Jonsong was still inside) and smashed their cameras. L. Jonsong was then taken to the police station for questioning. He resigned as Chief Counsel for Chen Guangcheng's case.

170. On 18 August 2006, the day before C. Guangcheng's trial, his lawyers were detained by police. X. Zhiyong who replaced L. Jinsong was allegedly beaten and taken into police custody and not released until 22 hours later after C. Guangcheng's trial had ended. Similarly, it is alleged that L. Jinsong and another lawyer, Z. Lilhui were detained by police the night before the trial then released after the trial without charge.

171. On 24 August 2006, the Yinan County People's Court convicted C. Guangcheng under article 291 of the Chinese Criminal Code (CCC) for "gathering crowds to disrupt traffic" and "intentional destruction of property". CCC article 291 provides that "[w]here people are gathered to disturb order at railway stations or bus terminals, ferry landings, civil airports, market places, parks, theatres and cinemas, exhibition halls, sports grounds or other public places, or to block traffic or disrupt the movement of traffic, or to resist or obstruct public security officials from carrying out their duties according to law, if the resulting situation is serious, the ringleaders shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or surveillance." C. Guangcheng was sentenced to four years and three months imprisonment.

172. However, the Linyi City Intermediate People's Court, when reviewing the appeal by C. Guangcheng's lawyers, overturned this verdict on 30 October 2006 on the basis of insufficient evidence for convicting C. Guangcheng for the offence under CCC article 291. Instead of declaring C. Guangcheng to be innocent and releasing him, the Intermediate Court referred the case back to the lower court for re-trial. He continued to be held in detention at the Yinan County Detention Centre.

#### **Response to an allegation letter sent in 2005**

173. On 29 December 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture, sent an allegation letter concerning **Liu Jizhi**, aged 51 and **Han Yuzhi**, aged 42, both of whom are Falun Gong practitioners. According to the information received: On the night of 24 November 2005, Liu Jizhi was abducted by an estimated seven policemen. Her home was ransacked and all Falun Gong materials were seized. She was taken to Dongchengfang Town Police Station in Turzhou City, Hebei Province, where she was interrogated, beaten with rubber clubs and given electric shocks with stun batons. At approximately 2 p.m. on 25 November 2005, a police officer called He Xuejian took Liu Jizhi to a room, where he lifted her shirt and touched her breasts. He then gave her electric shocks on her breasts with a stun baton. Another police officer called Wang came into the room and encouraged He Xuejian to beat her up. After Wang left the room, He Xuejian raped Liu Jizhi. While raping her, he repeatedly slapped her in the face. He then brought Han Yuzhi into the same room and raped her too. Both rapes took place in the presence of another police officer, Dajun, who made no attempt to intervene or prevent the incidents.

174. By letter dated 28 June 2006, the Government informed that on 24 November 2005, the two women were taken in to the local public security office for questioning, on suspicion of

involvement in illegal activities, and were released in the afternoon of the same day. On 26 November, the Dashiqiao criminal police team in the Tunzhou City Public Security Bureau received a complaint from HY, claiming that she had been raped by HX. On 27 November, LJ also filed a report with the Tunzhou Public Security Bureau, stating that she too had been raped. The authorities promptly summoned the policed officer in question. In the ensuing questioning and investigation, it was ascertained that he was a temporary employee in the Dongchengfang Township Public Security Office. He admitted that, in the afternoon of 25 November 2005, he had taken LJ and HY in turn back to his hostel, where he had indecently assaulted LY and had raped HY. On 9 December, following approval from the procuratorial authorities, he was taken into custody. On 29 April 2006, the Baoding City People's Office of the Procurator, Hebei Province, instituted criminal proceedings with the Baoding City People's Intermediate Level Court against the defendant for the commission of the offences of rape and indecent assault of a woman. On 19 May 2006, after hearing the case, the court sentenced the defendant to eight years' fixed term imprisonment. On appeal, on 7 June, the Hebei People's High Court dismissed the appeal and upheld the original judgment.

### **Observations**

175. The Special Rapporteur would like to thank the Government of China for its reply to her communications of 29 December 2005, 1 February 2006 and 24 March 2006. However, she regrets not yet having received any reply to her communications on 30 November 2006 and 21 December 2006 and would like to reiterate her interest in receiving a reply also from the Government in regard to these allegation submitted.

## **Colombia**

### **Carta de alegaciones**

176. El 24 de marzo de 2006, la Relatora Especial, juntamente con el Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, envió una carta de alegaciones en relación con el asesinato de la menor S.P.G.G. así como de la violación sexual de J.A.T., una niña de 14 años, cometidos 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 G.G., 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 S.P.G.G., 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 de que el disparo que acabó con la vida de S.P.G.G. había sido efectuado 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 de 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 S.P. 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 expresaron su preocupación por los miembros de la familia de S.P.G.G. 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.

### **Respuesta del Gobierno**

177. Mediante cartas de 11 de abril de 2005 y del 29 de mayo de 2006 el Gobierno respondió a la carta de alegaciones y transmitió la siguiente información:

178. El Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario de la Vicepresidencia de la República proporcionó la siguiente información:

#### *Caso de S.P.G.G.*

179. Una vez este Programa tuvo conocimiento de los hechos ocurridos solicitó información, mediante oficio EXT.06-20810 del 22 de febrero de 2006, 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.

180. En esa misma fecha, se 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 S.P.G.G. relata que:

181. En atención con el oficio de la referencia, relacionado con la muerte y violación de dos menores en el municipio de Argelia, se dio traslado del mismo al Fiscal 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.

182. También se comunicó que el Fiscal Delegado tuvo conocimiento de los hechos en los cuales perdió la vida la menor S.P.G.G., 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, dirigido 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 (Antioquia) para que enviase copia de la queja instaurada por la hermana de la víctima, así como de los demás medios probatorios que condujesen a establecer las causas del deceso.

*Caso de J. A. T.*

183. En lo referente al caso de la presunta violación de una menor de 14 años en zona rural del municipio 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, mediante carta del 6 de abril de 2006, informó que:

184. Adicionalmente, por el presunto abuso sexual de que fuere víctima la menor J.A.T., se conoció que la personería de Argelia estaba adelantando la investigación de los hechos por lo que se le envió oficio 371 de fecha marzo 9 de 2006, solicitándole el envío de la misma.

185. Se indicó que esta Fiscalía estaba a la espera de las respuestas solicitadas con el fin de dar inicio a las respectivas investigaciones.

186. La Fiscalía General de la Nación, Seccional de Sonson (Antioquia), tuvo conocimiento de los hechos en los cuales perdió la vida la menor S.P.G.G. 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 el estado de la investigación. La Fiscalía General de la Nación se encuentra a la espera de la remisión de dicha información.

187. Por su parte, la Procuraduría General de la Nación manifestó que el Procurador Regional de Antioquia tiene conocimiento del caso y ha requerido al 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 población civil, con el fin de evitar que estos hechos se repitan.

188. 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 del conocimiento que tuviese sobre el particular, y especialmente acerca de las investigaciones adelantadas. De igual forma puso en conocimiento del caso a la Procuradora Delegada para las Fuerzas Miliare, con el fin de que se adopten las acciones pertinentes.

**Respuesta del Gobierno a una carta de alegaciones transmitida en 2005**

189. El 2 de septiembre de 2005, la Relatora Especial, juntamente con el Relator Especial sobre la cuestión de la tortura y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió una carta de alegaciones en relación con E. G., estudiante indígena de 19 años de edad, de Puacé, Departamento de Cauca. De acuerdo con las alegaciones recibidas, el 9 de agosto de 2005, entre las 16.30 y 17.00 horas en el caserío 'El Alto' en el casco urbano de Cocomuco, Puacé, en un lugar ubicado a poca distancia de una instalación de la Policía Nacional, E. G. fue abordada por dos militares del Batallón "José Hilario López".

190. El 7 de marzo de 2006, el Gobierno transmitió la siguiente información adicional a la información que sobre esta situación había remitido el 31 de octubre de 2005 y el 16 de diciembre:

191. De acuerdo con la denuncia instaurada por la señorita E.G. se adelanta investigación penal por una presunta conducta punible contra la libertad, integridad y formación sexual; específicamente por acceso carnal violento.

192. La Fiscalía General de la Nación informa de que en el relato de denuncia, la señorita E.G. menciona que hacia las 14.30 del día 9 de agosto de 2005, en el sitio conocido como Vereda Yaquibá, del municipio de Puracé-Cocomuco, en el Departamento del Cauca, cuando se desplazaba desde su colegio hasta su vivienda, fue interceptada por un individuo quien vestía prendas militares, llevaba pasamontañas en su rostro y portaba un arma de fuego (fusil) con la cual logró intimidarla obligándola a internarse en el monte, en donde fue violada. Esta información, da cuenta de que fue solamente un soldado del Ejército Nacional quien al parecer la agredió sexualmente y no dos, como se menciona en el escrito de la denuncia.

193. La investigación se inició con ocasión de la denuncia instaurada por la señorita E.G. ante la Fiscalía Local de Cocomuco.

194. El 10 de agosto de 2005, con la colaboración de la Fuerza Pública y previa formación de los soldados, E.G. reconoció como posibles agresores a dos de ellos, adscritos al batallón José Hilario López – acantonados en la región –, uno de los cuales desertó de las filas militares el 11 de agosto del mismo año. El 18 de agosto de 2005 se decretó la apertura de la instrucción, teniendo como presunto responsable al soldado desertor, sobre quien se dictó orden de captura, la cual no ha podido hacerse efectiva, a pesar de los ingentes esfuerzos de búsqueda e inteligencia de la Policía Judicial.

195. E.G. fue efectivamente valorada por un médico del Centro de Salud de Cocomuco, quien dictaminó que en efecto hubo una violación sexual.

196. Se ha recibido la ampliación de la denuncia por parte de E.G., el testimonio del Capitán del Ejército Nacional, se han allegado informes investigativos realizados por la Policía Judicial y se encuentran ordenadas algunas otras pruebas que serán practicadas oportunamente. El imputado fue vinculado al proceso mediante resolución de fecha 28 de noviembre de 2005, con la que se le declaró persona ausente.

197. En materia disciplinaria, le corresponde al Ejército Nacional, Batallón José Hilario López de la ciudad de Popayán, adelantar la investigación respectiva, como quiera que el imputado formaba parte de esa unidad, de conformidad con la información suministrada.

198. La Fiscalía General de la Nación ha comunicado que no tiene conocimiento sobre compensaciones a título de indemnización que la señorita E.G. o su familia hayan recibido. Es importante precisar que ni la víctima ni su familia se han constituido como parte civil dentro del proceso penal que se adelanta, para poder obtener el resarcimiento de daños y perjuicios.

### **Observaciones**

199. La Relatora Especial agradece al Gobierno la información proporcionada sobre los casos de S.P.G.G., J.A.T. y E.G..

### **Cyprus**

#### **Allegation letter**

200. By letter dated on 9 June 2006 the Special Rapporteur has jointly with the Special Rapporteur on trafficking in persons, especially women and children sent an allegation letter to the Government concerning the deportation of T.S., a national of the Russian Federation.

201. According to the information received: T.S. initially traveled to Cyprus in 2003 to work in a night-club in Larnaka. Reportedly T.S. was sexually abused by the owner of the club who also posed serious limitations on her freedom of movement. She reportedly managed to escape from this situation of abuse and exploitation and went into hiding under the protection of the Russian Mission.

202. According to the information received, T.S. filed a complaint for the abuse suffered with the police in 2004. According to the Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, T.S. should have qualified as victim of trafficking and be entitled to protection and support as well as with the possibility to remain to be employed by another employer. The law furthermore provides for a Court of Ministers, which may appoint a "guardian of victims" to advise, counsel, and guide victims of exploitation; to hear complaints of exploitation; to investigate those complaints; to provide victims with treatment and safe residence; to take the steps necessary through the appropriate agencies to prosecute the offenders; to take rehabilitative measures, including victim reemployment or repatriation, and to identify any deficiency in the law to combat trafficking.

203. According to the information received however, T.S. was deported on 29 May, before her solicitor was able to present an appeal to Cypriot immigration authorities.

#### **Response from the Government**

204. By letter dated 26 October 2006, the Government informed that T.S. initially arrived in Cyprus in November 2002 and not in 2003. As she informed the Cyprus police, she was previously working in Lebanon and Syria as an entertainer. During her stay in Cyprus, she was employed at the "NOSTALGIA" night club, where, according to her complaint to the Cyprus Police on 3 June 2003, her employer attempted to illicit her to prostitution. As a result, she was forced to change employer and continued working in an unidentified night club in Limassol. Afterwards, T.S. traveled to her country and returned to Cyprus on 15 November 2003, to work at the night club "Chiquito" in Larnaca and she was granted work permit for three months, which was renewed on 19 May 2004.

205. On 22 March 2004 she married K.J.M., a British citizen, 55 years old. On 23 March 2004 she visited with her husband the British High Commission in Nicosia, requesting visa to enter Great Britain, which was refused, because she was required to have stayed at least one year in Cyprus, before being granted with a visa. T.S. has subsequently abandoned her husband and

found refuge at the Russian Church in Limassol. On 11 June 2006 her husband applied (application n° 149/04) to the District Court of Lamaca for a divorce and on 09 June 2006 the Court delivered its decision for divorce.

206. During the above mentioned period, T. S. repeatedly applied to the Migration Officer for work permit in other areas of activity and in early 2005 she applied to the Movement for Equality, Support and Anti-racism for assistance. On 26 April 2005, T. S. was informed by the Migration Officer that her request for a work permit was not accepted. On 03 June 2006 she complained to Lamaca Police that she had been forced to prostitution by her employer at "Chiquito" night club, from 15 November 2003 to 22 March 2004. In her submission to the Police, T. S. included much inaccurate information and did not provide enough evidence for the prosecution of her employer. She also provided contradicting information as regards the submissions made by other people and did not provide critical information and adequate answers to the Cypriot Authorities. Furthermore, when she applied to Lamaca Police on 23 March 2004, when asked whether she had any complaint against her employer her answer was negative.

207. After thorough investigation of the above case according to the relevant laws of the Republic of Cyprus and the European Union, as well as the international obligations of Cyprus vis-à-vis the United Nations Conventions and with the involvement, inter alia, of the Office of the Attorney-General of the Republic of Cyprus, T. S. was deported to her country on 28 May 2006. It is noted that the complaints made by T. S. were given the necessary attention and were thoroughly investigated and that the Government of the Republic of Cyprus showed and remains highly sensitive to issues concerning sexual abuses and trafficking in persons, especially women and children.

#### **Observations**

208. The Special Rapporteur would like to thank the Government for its reply to her communication of 9 June 2006.

### **Democratic People's Republic of Korea**

#### **Allegation letter**

209. On 20 December 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and the Special Rapporteur on trafficking in persons, especially women and children, sent an allegation letter concerning allegations of trafficking of female citizens of the Democratic People's Republic of Korea in the People's Republic of China. The problem is exacerbated by their cruel, inhuman and degrading punishment upon their deportation from China to the Democratic People's Republic of Korea.

210. According to information received nationals of the Democratic People's Republic of Korea commit a criminal offence if they leave the country without official permission. Article 233 of the revised 2004 Criminal Code makes the crossing of an international border without permission a criminal offence punishable by up to two years in a labour training camp (*nodong danryundae*) or a detention centre (*jipkyuiso*), in grave cases up to three years. According to

article 62 of the Criminal Code, defection to a foreign country or to the enemy in betrayal of the country and the people is a criminal offence punishable by no less than five years of detention in a political labour camp (*kwanliso*) or a re-education labour camp (*kyohwaso*). In extremely grave cases the offence allegedly carries the death penalty.

211. Despite these harsh penalties, a considerable number of citizens of the Democratic People's Republic of Korea clandestinely cross international borders. Reportedly, there are at least 50,000 citizens of the Democratic People's Republic of Korea who have an irregular visa status in the Korean Autonomous Prefecture of Yanbian (Jilin Province, China), which borders the Democratic People's Republic of Korea and is home to about one million Chinese citizens of Korean ethnicity. While a considerable number of them leave Democratic People's Republic of Korea to escape persecution by the Government of the Democratic People's Republic of Korea for reasons of religion, membership of a particular social group or political opinion, many others flee from the dismal socio-economic situation.

212. The People's Republic of China has a general policy of arresting and deporting Democratic People's Republic of Korea citizens who do not possess a valid visa. The Chinese authorities reportedly consider them to be irregular migrants who cross the border for purely economic reasons. Upon their return to the Democratic People's Republic of Korea, deported persons are usually first taken to the State security agency (*bowibu*) where they are subject to beatings, humiliating body searches, and interrogated on their activities in China. After the interrogations, which can take a week or longer, the majority of persons are sent without trial or any form of judicial process to a labour training camp (*nodong dawgyundae*) or a provincial detention centre (*jipkyulsso*), close to their hometown. Upon arrival, they are usually again stripped, searched, interrogated and beaten. Detained for several months in inhuman conditions in overcrowded, unsanitary cells, they are forced to perform long hours of hard labour. Some detention centres force prisoners to attend re-education sessions every night. Food rations usually consist of congee or soup with a bit of cabbage, three times a day. The combination of hard labour, sub-standard food and unsanitary living conditions results in high illness rates. Detainees who become seriously ill are often released since there is no medical care available in these institutions and the authorities do not want to be burdened with a dying inmate.

213. Citizens of the Democratic People's Republic of Korea, who the authorities believe to have made contact with churches, citizens of the Republic of Korea or journalists or to have engaged in any other conduct officials consider to be political betrayal, are usually sent without trial or any form of judicial process to a political labour camp (*kwanliso*) or a re-education labour camp (*kyohwaso*), and detained for periods ranging between several years and a lifetime. Detainees have to perform hard labour while being perpetually kept on the verge of starvation. Reports also indicate that many detainees are subjected to various forms of torture.

214. Summary executions have also been reported to occur in detention facilities. In 1999, for instance, two women were reportedly executed in Onsong Detention Centre after they confessed to having converted to Christianity.

215. The cruel, inhuman and degrading punishment of Democratic People's Republic of Korea citizens who clandestinely crossed the border into China and were then deported also exacerbates the human trafficking of women from the Democratic People's Republic of Korea, who make up about half of all those who cross the border. Upon arrival in China, many of these women are



trafficked and forced to marry or become the concubines of Chinese men. Human traffickers systematically target the women, who are usually hungry and desperate, by approaching them in the border region and promising them food, shelter, employment and protection. Once the traffickers have gained the women's confidence, the women are lured to an apartment, confined and then sold to local men. The buyers often lock the women in the house, tie them up, take away their clothing to prevent them from escaping the forced relationship. In many cases, the women are also physically abused and raped by their buyers. Some women are also trafficked into the sex industry in Jinlin Province and other parts of China. They are forced to prostitute themselves in brothels, which are often disguised as karaoke bars.

216. Since they fear deportation to and punishment in the Democratic People's Republic of Korea, the women are effectively denied access to the protection of the Chinese authorities. Human traffickers are well aware of this fact and use it to subdue their victims by threatening to report them to the Chinese authorities if they resist.

217. The situation is particularly dire for women who have become pregnant as a result of sexual exploitation in forced marriages or the sex industry and are then deported. Pregnant women who the Democratic People's Republic of Korea authorities suspect of being impregnated by Chinese men are often subjected to particularly harsh treatment and also torture. Their pregnancies are considered evidence of indecent sexual relations with foreigners and a betrayal of the home country. In the past, there have also been reports about cases in which women were forced to have abortions or newly born infants were murdered.

#### **Response from the Government**

218. By letter dated 4 January 2006, the Government returned the Special Rapporteurs' letter dated 20 December 2005 stating that the forces hostile to the Democratic People's Republic of Korea were becoming ever more reckless in their attempts to defame, disintegrate and overthrow the state and social system of the country. As part of these attempts they were resorting to every possible means in the international human rights field including by continuing to circulate fabricated information on and forcing the allies and various individuals of the world to join their plot against the Democratic People's Republic of Korea. In the light of its political motives, provocative nature and fabricated contents, the joint letter, was construed as a product of a conspiracy undertaken in line with hostile forces' attempts. The Government stated that it therefore rejected the joint letter.

#### **Urgent Appeal**

219. On 24 March 2006 the Special Rapporteur has jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography sent an urgent appeal concerning the forced repatriation of a female national of the Democratic People's Republic of Korea by the People's Republic of China on 28 February 2006.

220. According to the information received: Six years ago, the woman referred to above, and her one-year-old daughter, were sold for 3,000 RMB to a Chinese man, who she was forced to marry. The woman became pregnant soon thereafter and gave birth to a second daughter named K.Y. It is reported that the mother was arrested by a Chinese police raid squad at 11.30 p.m. on 25 February 2006 and handed over to the Democratic People's Republic of Korea security police

three days later. Concern is expressed that the woman may face harsh punishment since she had already been deported on two previous occasions, but managed each time to return to her children in China.

221. Reportedly, this is not a singular incident. In cities near the border, including Yanji and Longjin, an intensified information exchange on defectors between Democratic People's Republic of Korea and Chinese authorities has reportedly led to an increase in deportations of Democratic People's Republic of Korea nationals. In this context, the Special Rapporteurs referred to their communication of 20 December 2005, in which they expressed their deep concern about the cruel and inhuman punishment facing nationals of the Democratic People's Republic of Korea upon their forced return to the Democratic People's Republic of Korea.

#### **Response from the Government**

222. By letter dated 12 April 2006, the Government responded and stated that the joint letter of 24 March 2006, like an earlier letter dated December 20, 2005, also represents a product of conspiracy undertaken in pursuit of the ill-minded aim of spreading fabricated information while following the attempts of those hostile forces to defame, disintegrate and overthrow the state and social system of the Democratic People's Republic of Korea on the pretext of human rights. The letter has no relevance to genuine human rights, the Government stated.

223. Therefore, the Government resolutely and categorically rejected the letter. The Government stated that it had already made it clear that it does not even recognize the Special Rapporteur known as appointed pursuant to the resolution on Democratic People's Republic of Korea forcibly adopted with the aim of overthrowing the country's social system and this position of ours will continue to remain invariable.

224. The Government was also of the opinion that, since three thematic Rapporteurs listed in the letter chose to pursue unilateral confrontation in disregard of the sincerity and generosity of the Government over the last years, it does not feel any further need to deal with them.

225. Finally, the Government asserted: "Moreover, addressing letters to countries by the special rapporteurs in the name of the Commission on Human Rights such as this constitutes an illegal and impertinent behaviour as their mandates were suspended with the conclusion of the work of the Commission. And in this context, the Government was doubtful as to why such insolent maneuvers on the part of the special rapporteurs were not frustrated. For this reason the Government sends back the joint letter of special rapporteurs dated 24 March 2006."

#### **Observations**

226. The Special Rapporteur takes note of the letter concerning the communication of 24 March 2006 and draws the Government's attention to Economic and Social Council resolution 2006/2 on the implementation of General Assembly resolution 60/251, which decided to abolish the Commission on Human Rights with effect from 16 June 2006.

## Ecuador

### Carta de alegaciones

227. El 10 agosto 2006, la Relatora Especial, conjuntamente con el Relator Especial sobre los derechos humanos de los migrantes y el Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía, transmitió una carta de alegaciones en relación con la situación de los colombianos en riesgo de ser objeto de la trata de personas en el Ecuador.

228. Según las informaciones recibidas, en el año 2004, el número de ciudadanos colombianos refugiados, solicitantes de asilo en el Ecuador, ascendería aproximadamente a 44.800 personas. En años recientes, el gobierno ecuatoriano habría implementado nuevas restricciones para los colombianos que desean ingresar al país, así como para aquéllos que desean permanecer en él.

229. Los retos que enfrentarían los refugiados colombianos, los solicitantes de asilo y los migrantes, les podrían poner en riesgo de ser objeto de tráfico hacia el Ecuador. Entre los factores que aumentarían el peligro de ser objeto de trata figura el aumento en las medidas de control en las fronteras recientemente implementadas por el gobierno ecuatoriano, incluida la exigencia del pasaporte judicial para cruzar la frontera. El pasaporte judicial es un registro oficial de no tener historia criminal, emitido por las autoridades colombianas. Este documento sería muy difícil de obtener por las personas que viven en las zonas rurales de Colombia, ya que sólo se puede obtener en las grandes zonas urbanas, a donde les es difícil y peligroso llegar. Además, sería excesivamente costoso para los campesinos colombianos sin recursos, lo cual lo volvería inaccesible para ellos.

230. En este sentido, el hecho de que los colombianos reaccionen ante este nuevo requerimiento cruzando la frontera en áreas remotas en lugar de hacerlo en los sitios oficiales de cruce, aumenta la preocupación de que se extienda la trata de personas. La presunta corrupción entre las autoridades ecuatorianas, incluyendo oficiales de frontera, también crearía un ambiente conducente a la trata de personas.

231. Se informa del hecho de que los colombianos que ingresan indocumentados al Ecuador, generalmente evitarían registrarse para solicitar asilo. De todas maneras, incluso si cruzan la frontera con los documentos requeridos, muchos escogerían permanecer no registrados por el temor de que al hacer notoria su presencia en Ecuador, ello atraería represalias por parte de la guerrilla colombiana o de ciertos elementos paramilitares.

232. Asimismo, si bien el permanecer indocumentados puede que proteja a los colombianos de ser objeto de abusos por parte de los insurgentes, irónicamente ello podría volverles más vulnerables a la explotación, incluyendo la trata de personas. La falta de estatus legal les dificultaría el poder denunciar a las autoridades ecuatorianas explotaciones o abusos de los cuales hayan sido objeto. Ello también convertiría a los colombianos en un blanco para la trata de personas, ya que serían controlados más fácilmente por los traficantes. La reciente disminución del índice de concesiones de asilo podría exacerbar este problema, ya que los individuos a los que se les deniega el asilo pasan a vivir en la sombra de la sociedad ecuatoriana, con la esperanza de no ser detectados por las autoridades. Ellos también se tomarían presa fácil para los traficantes.

233. Según las informaciones recibidas, los colombianos, especialmente las mujeres, se enfrentarían a una significativa discriminación dentro del Ecuador. Ello les obligaría a ingresar en la economía informal, incluyendo el trabajo sexual. En muchas ocasiones, se verían obligadas a buscar protección de hombres ecuatorianos, quienes a su vez frecuentemente las explotarían. Pueblos fronterizos, como Lago Agrio, tienen ya de por sí un alto nivel de delincuencia y prostitución, por lo que las mujeres y niños colombianos frecuentemente terminarían como trabajadores sexuales.

234. Precisamente en Lago Agrio se constata un elevado número de niños no acompañados. Se informa de que existe un orfanato en ese lugar, pero solamente pueden ingresar los niños menores de 12 años. Los niños mayores serían entregados a familias de la zona y se volverían vulnerables a abusos.

235. Se informa del hecho de que los niños colombianos tendrían dificultades para recibir educación a causa de la discriminación o por los costos prohibitivos de la educación. Como resultado, frecuentemente dejarían de estudiar y se pondrían a trabajar para ayudar a mantener a sus familias. Ello también les tomaría vulnerables a la trata de personas.

#### **Observaciones**

236. La Relatora Especial lamenta que no había recibido una respuesta para su comunicación de 25 julio de 2006.

### **France**

#### **Lettre d'allégations**

237. Par lettre datée du 3 mars 2006, le Rapporteur spécial sur les droits de l'homme des migrants et la Rapporteuse spéciale ont attiré l'attention du Gouvernement sur des allégations concernant la législation française.

238. Selon les informations reçues, certaines des modifications proposées à la législation française sur l'immigration (Code de l'entrée et du séjour des étrangers et du droit d'asile) auraient pour conséquence de restreindre le droit à la vie de famille en introduisant des délais et des conditions supplémentaires au regroupement familial, ainsi que des limitations au droit de mariage. Les délais et restrictions supplémentaires créeraient une situation de précarité du statut d'étranger et de ce fait, une dépendance entre les membres de la famille, qui pourraient contribuer au maintien des situations de violence familiale et conjugale.

239. Les modifications annoncées devraient dans les faits toucher davantage les femmes, qui représenteraient environ 80% des conjoints rejoignant, en ce qu'elles renforceraient les situations de dépendance conjugale et pourraient favoriser des situations de violence.

240. Selon les rapports reçus, le projet prévoirait que le titre de séjour des conjoints de Français pourrait être retiré si les époux se séparent pendant les quatre années qui suivent le mariage. Il ne contiendrait aucune référence sur la procédure à suivre en cas de violences conjugales.

241. Dans le cas des personnes entrées en France par regroupement familial avec leurs époux étrangers, le délai pendant lequel le titre de séjour pourrait être retiré si le couple se sépare, serait prolongé de deux à trois ans après le mariage. Le projet d'article maintiendrait la possibilité, déjà prévue dans la loi actuelle, que l'autorité puisse accorder un renouvellement du titre si la communauté de vie est rompue en raison de violences conjugales. Cependant, selon les rapports reçus, en raison du manque d'information des personnes concernées et du grand pouvoir discrétionnaire octroyé aux préfets, cette loi a donné lieu à une grande hétérogénéité des pratiques et ne peut pas être considérée comme une protection adéquate. Les dispositions légales proposées sembleraient dans tous les cas laisser entièrement à la discrétion des autorités administratives le pouvoir de renouveler les permis des personnes étrangères ayant quitté le domicile conjugal en raison de violences conjugales.

242. En outre, certaines des modifications proposées rendraient les personnes concernées dépendantes de leurs employeurs pour obtenir et maintenir le droit de séjourner légalement en France, sans la possibilité de changer de travail même en cas d'abus de la part de l'employeur. De même, en cas de licenciement, l'étranger serait expulsé sans recours.

243. Le projet restreindrait également les possibilités de contester les décisions de l'administration devant les tribunaux autorisant les préfetures à appliquer leur pouvoir discrétionnaire dans un grand nombre de situations.

#### **Réponse du Gouvernement**

244. Par lettre datée du 19 mai 2006, le Gouvernement a indiqué que le projet de loi relatif à l'immigration et à l'intégration actuellement discuté au Parlement a pour objet de mieux encadrer l'immigration afin de favoriser une intégration durable et réussie des étrangers en France. Il entend maintenir la tradition d'ouverture de la France aux étrangers et garantir le respect des droits et libertés individuels qui leur sont reconnus. Dans le domaine particulier des procédures de regroupement familial, le projet de loi maintient le droit constitutionnellement protégé en France de tout étranger résidant régulièrement, à se faire rejoindre par sa famille. Il aménage cependant les modalités d'exercice de ce droit en portant de 12 à 18 mois le délai de résidence requis pour solliciter le regroupement familial, en prévoyant que l'étranger devra justifier par les ressources de son travail des moyens de subvenir aux besoins de sa famille et en prévoyant que l'étranger devra se conformer aux principes qui régissent la République française.

245. Le titre de séjour délivré au conjoint, admis dans le cadre d'un regroupement familial, pourra être retiré pendant un délai de trois ans – et non plus deux ans – en cas de rupture de vie commune. Cette disposition est rendue nécessaire pour dissuader certains abus de procédure actuellement constatés. Comme le prévoit déjà la législation actuelle, le principe du retrait de la carte de séjour en cas de rupture de vie commune ne sera pas applicable lorsque la communauté de vie cessera en raison de violences conjugales.

246. Par ailleurs, ce projet ne comporte pas de disposition qui puisse porter atteinte aux droits des étrangers de former un recours devant la juridiction administrative ou judiciaire selon les cas, en cas de violation alléguée de leurs droits. Le projet de loi du Gouvernement a été examiné par le Conseil d'État, qui a notamment vérifié sa conformité aux engagements internationaux que la France a souscrits dans le domaine des droits de l'homme. Il est actuellement soumis à la représentation nationale qui pourra le discuter, l'amender et le compléter. Il pourra également,

selon les dispositions constitutionnelles applicables, être soumis au Conseil constitutionnel avant sa promulgation, qui pourra contrôler sa conformité aux obligations découlant de la Constitution et vérifier en particulier qu'il n'existe pas d'atteinte aux droits et libertés individuels.

### **Observations**

247. Je souhaiterais remercier le Gouvernement de sa réponse datée du 19 mai 2006.

### **Germany**

#### **Urgent appeal**

248. On 27 June 2006 the Special Rapporteur has jointly with Special Rapporteur on trafficking in persons, especially women and children, sent an urgent appeal to the Government to bring its attention to the information regarding T.B., a German citizen of Turkish descent. According to information received, T.B. is a German citizen from Hamburg. In April 2006, T.B. travelled with her mother from Hamburg to the settlement of Karastlak Köyü in the village of Yeni Halfeti, Şanlıurfa province, southeast of Turkey, where her grandmother and other relatives reside. Allegedly, her family had made her believe that she was going to vacation in the village.

249. Upon T.B. arrival in the village, her mother allegedly took her passport and other identity documents away and told her that she had to enter into an arranged marriage with a close relative. According to the latest information received, T.B. is still in Yeni Halfeti. Reportedly, she faces serious limitations of her freedom of movement and is only on rare occasions able to leave her grandmother's house.

250. Concern is expressed that T.B. may be forced to marry her relative against her will or face severe violence, if she refuses.

#### **Response from the Government**

251. By letter dated 15 August 2006, the Government informed me that T.B. (married in Turkey against her will) left Turkey on 2 June 2006 together with an officially appointed escort and is being looked after away from the threat posed by her family within the scope of a German programme which provides assistance for young women.

252. It was possible to help T.B. so quickly thanks to the excellent close cooperation between the competent German guardianship court and the German Embassy in Ankara on the one side and the responsible Turkish institutions on the other. However, the success of this action was also contingent upon the young woman agreeing to return to Germany against the express will of her legal guardians and accepting the personal consequences.

253. The German Government will remain committed to taking decisive action against forced marriage. In comparable cases abroad, however, it will continue to rely on the readiness to cooperate of host governments.

**Observation**

254. The Special Rapporteur would like to thank the Government for its reply to the communication of 27 June 2006 and would like to welcome the steps which the Government took to protect T.B. The Special Rapporteur would like to receive follow-up information on whether criminal action was taken against any of the alleged perpetrators.

**Greece****Allegation letter**

255. On 25 July 2006 the Special Rapporteur on violence against women, its causes and consequences has jointly with the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on the sale of children, child prostitution and child pornography, sent a letter of allegation concerning the trafficking of newborn infants from Bulgaria to Greece.

256. According to the information received, it is alleged that pregnant women, most of them from the Roma community in the region of Burgas in eastern Bulgaria, and many of them unemployed and living in harsh conditions, are induced by members of organized crime to come to work to Greece, being promised employment and good salaries.

257. It is reported that instead, these pregnant women end up in small cities throughout Greece, where they are held together in apartments for the remainder of their pregnancy, before delivering at local hospitals, where, with the complicity of doctors, midwives and other hospital staff, their newborn babies are taken away from them and sold by organized crime members with the assistance of lawyers for up to 30 000 euros.

258. It is alleged that after having given birth in Greece, the women are sent back to their hometowns in Bulgaria and receive 1,000 euros per child.

259. Reports also alleged that little progress has been made by Greek and Bulgarian authorities in the investigations on trafficking and sale of children taking place between the two countries. It is further reported that the complex and long procedures for legal adoption in Greece might have brought to an increase in instance of trafficking and sale of children.

**Response from the Government**

260. By letter dated 14 September 2006, the Government of Greece responded to the letter of allegation sent by the Special Rapporteur and the Special Rapporteur on trafficking in persons, especially women and children, on 25 July 2006.

261. The Government provided information pertaining to the legal provisions on adoption in Greece. Adoptions are actually governed by Law No. 2447/1990 on Adoption, supervision and sponsorship of minors, judicial attendance, judicial diligence of other's affairs, relevant substantial, procedural and transitory provisions as well as articles 1542 to 1588 of the Civil Code.

262. Furthermore, the provisions contained in paragraphs 2 and 3 of article 10 of Law No. 2447/96 have a criminal and therefore a police interest. The said provisions stipulates imprisonment or incarceration penalties depending on the regularity of perpetration against the person who gives away his child for adoption, or any intermediate person who acts with the aim of gaining unfair benefits. By virtue of such provisions, police authorities have been assigned with the task of combating illegal adoptions and certifying the related crimes.

263. The Government also provided a brief overview of the different stages to a legal adoption in Greece. The first step is to prospect the adopting parents to come in contact with the adopted child's natural parents and to obtain the latter's consent for the adoption. Thereafter, the competent social service conducts an investigation, focused on the adopted child's best interests and draws up a report based on its findings. Finally, the competent Court, after an application filed by the adopting parents, having taken into consideration the said report and any other information it may have, ratifies and gives approval for the adoption.

264. The Government noted, thanks to statistics on illegal adoptions kept by the Directorate of Public Safety, Hellenic Police Headquarters, that all the cases of trafficking of newborn infants involved Bulgarian nationals, both as offender and victims and that the police are aware of the places of Bulgarian pregnant women's recruitment, the modus operandi, the routes followed in order to enter Greece. In an effort to combat such criminal activities, the Hellenic Police Headquarters is cooperating with its Bulgarian counterpart and several significant results has therefore yielded during the last two years, such as mechanisms for the exchange of information, the cooperation with the police authorities with liaison officers of the two sides and in cases of large-scale investigation, the meeting of operation officers of both sides in order to eradicate criminal groups.

265. According to the statistics on illegal adoptions kept by the Directorate of Public Safety, Hellenic Police Headquarters, the following cases have been dealt with by the relevant Services:

Year 2002:

Number of cases: 1

Offenders: 8 (5 Bulgarian and 3 Greek nationals)

Victims: 1 infant (Bulgarian)

Year 2003

Number of cases: none

Year 2004

Number of cases: 8

Offenders: 22 (16 Bulgarian and 6 Greek nationals)

Victims: 8 infants (7 Bulgarians and 1 Greek)

Year 2005

Number of cases: 1

Offenders: 4 (3 Bulgarian nationals and 1 of unknown particulars) - only one person arrested)

Victims: 1 infant (Bulgarian)

Year 2006 (up to 06/04/2006)



Number of cases: 7 (1 trafficking in human beings)  
Offenders: 27 (20 Bulgarian, 2 Albanian and 5 Greek nationals)  
Victims: 7 infants (6 Bulgarians and 1 Albanian)

### **Observations**

266. The Special Rapporteur would like to thank the Government for its reply to her communication of 25 July 2006. It is positive to note that the Greek police authorities are cooperating with the Bulgarian authorities on this matter.

## **Guatemala**

### **Llamamiento urgente**

267. El 9 de junio de 2006, la Relatora Especial, juntamente con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con el personal de las organizaciones no gubernamentales Unión Nacional de Mujeres Guatemaltecas (UNAMG) y Sector de Mujeres. La UNAMG trabaja en defensa de los derechos de las mujeres. En particular, promueve la participación política de las mujeres y condiciones de equidad, la justicia de género, y la no violencia contra las mujeres. Además, la UNAMG tiene un Proyecto de Víctimas de Actoras de Cambio para mujeres sobrevivientes del conflicto armado que ayuda a las mujeres víctimas del conflicto armado. De acuerdo con la información recibida:

268. El 29 de mayo de 2006 las oficinas del Sector de Mujeres en la ciudad de Guatemala habrían sido allanadas por personas desconocidas. Según se informa, los asaltantes habrían robado teléfonos celulares y un fax, habrían registrado archivos y habrían dejado huellas de sangre cerca de las ventanas y a lo largo del piso y hacia la cocina, el cuarto de baño y oficinas internas.

269. El 5 de junio de 2006 las oficinas de la sede de Chimaltenango de la UNAMG habrían sido allanadas por personas desconocidas. Según se informa, los asaltantes habrían violentado los escritorios y archivos y se habrían llevado una computadora que estaba adjudicada al Proyecto de Víctimas de Actoras de Cambio para mujeres sobrevivientes del conflicto armado.

270. Se teme que estos eventos puedan estar relacionados con la labor que hace la UNAMG y el Sector de Mujeres en defensa de los derechos humanos de las mujeres en Guatemala, en particular porque las dos organizaciones han denunciado públicamente las violaciones en contra de las mujeres en ese país. Además, se expresan temores que estos allanamientos puedan formar parte de un intento de intimidar a los defensores de los derechos de las mujeres.

### **Observación**

271. La Relatora Especial y la Representante Especial están a la espera de información sobre las alegaciones transmitidas al Gobierno el 9 de junio de 2006.

## India

### Urgent appeal

272. On 3 March 2006 the Special Rapporteur has jointly with Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people sent an urgent appeal to the Government concerning the arbitrary detention and possible torture of an indigenous woman, M.N. resident of Yainpok Leirongthel, Khangbok Part III, Thoubal District, Manipur.

273. According to the information received, M.N. was the girlfriend of the late K.R., alias Mr. B., who was reportedly a member of the prohibited People's Liberation Army (PLA).

274. On 20 February 2006, Mr. B. was killed in an armed encounter with police in Thoubal Market. In the same incident, an Inspector and Officer-in-Charge of the Thoubal District Police Commandos Unit, and three other police were also killed. On 21 February 2006 at around 4.30 p.m., police commandos reportedly came in four jeeps to the house of Mr. B.'s family, attacked several of his family members and arrested M.N. because of her personal relationship with Mr. B. No arrest memo was issued. Instead, a police report was filed, which stated that M.N. was arrested on 22 February 2006, at 8 p.m. – more than 27 hours after the actual arrest. M.N. was charged with being “an associate of the party who ambushed the Officer in Charge and commandos” and “B.'s girlfriend”. A First Information Report (FIR) bearing number 25(2)06 of Thoubal Police Station under Section 20 of Unlawful Activities (Prevention) Act 2004 is registered against her.

275. On 22 February 2006, K.D. filed a petition with the Manipur Human Rights Commission (MHRC), which was registered as case No. 6 of 2006. The MHRC asked the Government to submit a report on the incident to the Commission by 27 February 2006.

276. On 23 February 2006, M.N. appeared before the Chief Judicial Magistrate in Thoubal and was remanded to police custody for 9 days. Sources allege that she was visibly weak and dizzy, indicating severe physical and mental torture. She was wearing a new shirt since the original shirt had allegedly been torn by the police, raising serious concerns of possible sexual violence.

### Allegation Letter

277. On 8 March 2006 the Special Rapporteur on violence against women, its causes and consequences has jointly with Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent an allegation letter to the Government concerning the alleged gang rape of M., a 22-year-old woman belonging to the indigenous Nut Community (a scheduled tribe) in Sirsi village, Chandauli District, Uttar Pradesh.

278. According to the information received, on 14 January 2006 at 1 a.m., four men from a nearby Hinauti village allegedly came to the house of M.'s family. All four men belong to the upper caste Singh community. The men assaulted M.'s family members and chased them away, leaving M. alone in the house. Allegedly, the four men then forcibly took her to the pulse plants field, one kilometer away from her house, where they gang raped her for three hours. When M.

fell unconscious, they threw her onto a nearby railway line, where she was found hours later by another villager.

279. The victim's family reported the incident to the Chandauli Police Station and lodged a First Information Report (FIR) against the four men under Section 376 of the Indian Penal Code and under Section 3(2) and Section 5 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. Reportedly, however, the police tried to delay action against the alleged perpetrators. Under intense pressure from the Nut community, the police finally arrested the alleged perpetrators – more than 40 hours after the rape allegedly took place.

280. The members of the indigenous Nut community in Sirsi village live in very poor conditions on government-owned land and make their living from begging. Conversely, the members of the Singh community are big landowners and wield considerable influence in the region. Concern is therefore expressed that the victim could be threatened and pressured to withdraw her complaint against the four Singh men.

### **Allegation letter**

281. On 13 April 2006 the Special Rapporteur has jointly with Special Rapporteur on the sale of children, child prostitution and child pornography and Special Rapporteur on trafficking in persons, especially women and children, sent an allegation letter to the Government to bring to its attention the information concerning the trafficking and sexual exploitation of Nepalese girls in brothels in Calcutta and Mumbai, India.

282. According to the information received, Nepalese girls, at an average age of 14 to 16 years, are trafficked from Nepal to brothels in Calcutta and Mumbai where they are required to work as prostitutes in slavery. The girls are trafficked against their will and without knowledge of their destination. The traffickers are reported to be Nepalese men and women, who sell the girls to brothel owners in Calcutta and Mumbai, at a price of approximately 60,000 to 70,000 Indian rupees (US \$ 1360-1590) in Calcutta and 100,000 to 120,000 Indian Rupees (US \$ 2270- 2720) in Mumbai. There is no evidence of extensive networks of traffickers of Nepalese women and girls and trafficking seems to take place through an informal network with the collaboration of community members, employers, local officials, border officials and others such as those who operate 'safe houses' where trafficked girls are kept prior to their sale.

283. Initially the girls are not taken to the brothels directly, but given some time to adjust to their new situation, in outside homes, sometimes owned by the brothel owner. After being told the work that is required of them, how to dress and behave and after being convinced that they themselves, or their families, have incurred a debt which they will have to pay off by working as a prostitute after which they are 'free' to leave, the girls are put to work as *tsukri* (the Bengali word for child in slavery or debt bondage).

284. When they start to work as *tsukris*, the girls are usually aged between 15 to 18 years. They often work in brothels that are referred to as "bungalows": brothels that occupy a flat, usually on the first or higher floors of a building, often with a shop on the ground floor. The bungalow is distinguished by a charnel gate (a sliding iron accordion gate) at the entrance to the brothel. When locked, the charnel gate is virtually impenetrable, making escape from the brothel impossible for the *tsukris* kept inside. The area within Calcutta that contains most bungalow-type

brothels with tsukris is Sonagachi, whereas in Mumbai brothels with tsukris can be found mainly in Kamathipura, although due to police raids these types of brothels are said to have moved to other cities in India or areas outside the known brothel areas.

285. It is reported that while clients of the brothels do not have a specific preference for tsukris, they do have a preference for girls between 15 and 20, which in turn creates a demand for children.

286. Under the tsukri system the brothel owner retains all of the fees paid by clients for the services provided to them by the tsukris. Considerable profits accrue from the use of tsukri system: brothel owners are said to earn four to twenty times the purchase price of the tsukri over the period of her servitude. The money that the trafficker earns is relatively insignificant compared to the large amount that the purchaser (brothel owner) earns.

287. The initial purchase price is recovered by the brothel owner, on average, in little over five and a half months. A Nepalese tsukri is also said to cost less than an Indian tsukri and because of continued client demand for Nepalese girls, the returns are higher. On occasion the brothel owner may also offer "special services" such as a tsukri's virginity or oral or anal sex as well as sex without a condom, at a special price.

288. The total period the girls spend in confinement as tsukris varies from two to ten years. After being released from slavery, it is often very difficult for tsukris to go back to Nepal. They fear isolation and reprisals from family and community members. Many of them take up work as free-agent sex workers, earning their own fees by doing street prostitution or paying tenancy to brothel owners. Escape prior to release is difficult as there is also fear of being brought back to the brothels, either by police or other community members, followed by severe physical punishment, as well as a more general fear of "India outside" since few tsukris had a clear idea of where they were, could not speak the language and were easily recognized as foreigners.

#### **Allegation letter**

289. On 8 December 2006 the Special Rapporteur has jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the question of torture, sent an allegation letter to the Government concerning the reported murder of S.B., wife of B.B., their daughter P. and their two sons, S. and R., all belonging to the Dalit Community in the village of Khairlanji, Bhandara District, in Maharashtra.

290. According to information received, there are only three Dalit families in Khairlanji and, approximately one hundred upper caste families. In the past, Baiyyalal Bhotnange already clashed with upper caste community members over a land dispute. On 3 September 2006, a local Dalit policeman was allegedly beaten up by upper caste community members. B.B., S., P., and R. reportedly testified against alleged perpetrators leading to their arrest.

291. On 29 September 2006, the alleged perpetrators were released. The same day, at about 6 p.m., a mob of two to three hundred upper caste villagers, many equipped with axes and *ubhari* (a stick with a metal spike), stormed their home, and dragged S.B. and her three children out of

the house. They were stripped naked, beaten and driven to the main village square. B.B. happened to be out of the house at the time of the incident.

292. Upper caste men then gang raped S.B. and her daughter P. for over an hour, while bystanders, including upper caste women, verbally incited the rapists and spurred them on. One of P.'s brothers was asked to have sex with P. and after he refused, his genitals were thrashed. P. was hit on her breasts with an axe and thrashed and stabbed with *ushari* in her genitals. All four persons were hacked to death and the bodies were thrown in a canal.

293. As of 30 November 2006, although a First Information Report (FIR) had been filed, the vast majority of the perpetrators, including those who allegedly became complicit to the gang rape and murder through verbal incitement, had reportedly not been arrested or charged. Many of Dalit families in the village were afraid to testify. Reportedly, only one eyewitness has come forward to testify.

### **Observations**

294. The Special Rapporteur regrets that the Government of India did not reply to any of her communications sent in 2006.

295. Regarding the communication dated 13 April 2006 concerning the trafficking and sexual exploitation of Nepalese girls in brothels in Calcutta and Mumbai, the Special Rapporteur recalls the report of the previous Special Rapporteur on violence against women, its causes and consequences, on her missions to Bangladesh, Nepal and India (E/CN.4/2001/73/Add.2). In this report, the Special Rapporteur found that the conditions of prostitution in some of the brothels in Bombay and Calcutta appeared to resemble slavery-like practices. Most of the young girls the Special Rapporteur spoke to were being held against their will, were tortured, degraded, beaten severely, and were repeatedly assaulted on the lower half of their bodies. They were deprived of food and water until they submitted.

296. In view of the fact that the other reported cases concern indigenous and/or lower caste women, the Special Rapporteur would like to make reference to the conclusions and recommendations of the Committee on the Elimination of Discrimination against Women in its 2000 concluding observations on India (A/55/38, paras. 42-90). The Committee found that discrimination against women who belong to particular castes or ethnic or religious groups is also manifested in extreme forms of physical and sexual violence and harassment. The Committee also expressed concern about the continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act of 1989 and urged the Government to introduce affirmative action programmes in such areas as education, employment and health so as to provide life chances to Dalit women and girls and create an environment conducive to their progress.

297. The Special Rapporteur reiterates her interest in receiving responses from the Government in regard to the allegations submitted and would be particularly interested to know whether these cases have resulted in any prosecutions of alleged perpetrators.

## Iran

### Urgent appeal

298. On 10 February 2006 the Special Rapporteur has jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture sent an urgent appeal to the Government regarding N., aged 18, who has reportedly been sentenced to death for a homicide committed when she was seventeen. According to the information we have received, on 3 January 2006, N. was sentenced to death for murder by a criminal court, after she reportedly admitted stabbing to death one of three men who attempted to rape her and her 16-year-old niece in a park in Karaj in March 2005. She was seventeen at the time. Her sentence is subject to review by the Court of Appeal, and if upheld, to confirmation by the Supreme Court.

299. In this connection, the Special Rapporteurs drew the Government's attention to the positive developments in a similarly situated case recently raised with your Excellency's Government by the Special Rapporteur on extrajudicial, summary or arbitrary executions. In note No. 331-2/3459, dated 17 January 2006, the Government informed the Special Rapporteur that "according to information received from the Judiciary of the Islamic Republic of Iran legal counsels of D. 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.

### Response from the Government

300. On 22 February 2006 the Government of Iran replied to the communication of 19 February informing that according to information received from the judiciary of the Islamic Republic of Iran, N. has been born in 1986 and that she, along with her niece, has committed murder about nine months ago, when she was over 19 years of age. According to the records of the Court, the crime has been committed based on personal reasons and not in self defense as it has been reported to the Special Rapporteur. She has gone through due legal proceeding and the Criminal Code of the province has reached its verdict, but the sentence must be presented to the Supreme Court and upon confirmation of the latter, it must be signed by the Head of the Judiciary. Therefore the case is still open and under consideration.

301. On 16 of May 2006, the Government informed the Special Rapporteurs that the Court has ruled out self defense and sentenced N. to retaliation. The sentence has been referred to the Supreme Court for final decision. Should the Supreme Court endorse the verdict, the case will be referred to an ad hoc commission of reconciliation to acquire the consent of the victim's heirs to commute the verdict to financial compensation. The Permanent Mission of the Islamic Republic of Iran informed that this is a lengthy process; therefore, the legal process is not yet completed and the verdict stays for the time being.

### Allegation letter

302. On 14 March 2006 the Special Rapporteur has jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on

the situation of human rights defenders sent an allegation letter to the Government regarding a peaceful assembly of women's rights activists in Tehran.

303. According to information received: On 8 March 2006, anti-riot police officers, Revolutionary Guards and plainclothes agents surrounded Tehran's Daneshjoo Park at 4. p.m. They ordered hundreds of women and men who had gathered there to celebrate International Women's Day to disperse. In response, the crowd staged a sit-in and sang the anthem of the women's rights movement. The security officers then proceeded to dump the contents of garbage bins on the women's heads and beat the persons assembled with batons, including poet **S. B.**, aged over 70. The security forces also arrested foreign journalists and confiscated their photographic equipment and video footage before releasing them. The commander of the security forces stated that the gathering was held without an official permit and that the security forces had to prevent the gathering from taking on a political dimension. On 7 March 2006, the Interior Ministry had summoned several women's rights activists and warned them to cancel the gathering planned for 8 March 2006.

304. Concern is expressed, particularly at the use of force by the authorities, to bring an end to what was reportedly a peaceful assembly in celebration of an internationally commemorated day. Concern is further expressed in view of the fact that security forces have, according to information received, repeatedly resorted to violence to support peaceful gatherings in past months. For example, in January 2006 security forces in Tehran attacked and arrested hundreds of striking bus drivers who were protesting their working conditions. In February 2006 in the city of Qom, security forces also reportedly resorted to the use of force and tear gas to detain hundreds of Sufi followers who had gathered in front of their house of worship to prevent its destruction by the authorities.

#### **Urgent appeal**

305. On 31 March 2006 the Special Rapporteur has jointly with the Special Rapporteur on the independence of judges and lawyers sent an urgent appeal to the Government regarding F.H.-P. who was sentenced to death in 1997 for the murder of her husband, a drug addict who had tried to rape her 15 year old daughter. F.H.-P. was already the subject of an urgent appeal by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Rapporteur on Violence against women on 11 February 2005 and by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 12 October 2004. Those communications drew the attention of the Government of the Islamic Republic of Iran to the fact that that F.H.-P. reportedly did not have access to adequate legal assistance in the course of her trial. We appreciate the responses of the Government of the Islamic Republic of Iran (dated 21 October 2004 and 27 May 2005) and welcome the review of her case by the local judicial authority and the likelihood of a clemency order from the Head of the Judiciary. However, we have recently been informed that her stay of execution has been rescinded by the Supreme Court and that her execution is reportedly scheduled to take place by or before 1st April.

#### **Urgent appeal**

306. On 13 April 2006 the Special Rapporteur has jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture

sent an urgent appeal to the Government regarding four women belonging to the Alhwazi Arab community in Iran and their children, namely M. K. (aged 28) and her son A. (aged 4), H. H. (aged 24) and her sons A. (aged 4) and O. (aged 2), S. K. and her son Z. (aged 4), and S. N.

307. According to the information received: M.K. is the wife of Alhwazi political activist H.N., who has fled Iran. She was arrested on 8 March 2006 together with her son A. and is held at Sepidar prison, Alhwaz city, Khuzestan province. It is alleged that H.N. was informed that his wife and son will be tortured or killed if he does not return to Iran. H. H. is the wife of Alhwazi activist H.F. She was arrested together with her sons A. and O. on or around 31 March 2006. They are currently held at an unknown location. Ms. S.K. is the wife of Alhwazi activist Mr. K.D.K. K. and her son Z. were arrested on an unknown date and are currently held at Sepidar prison. S.N., the wife of Alhwazi activist A.N., was three months pregnant when she was arrested on 27 February 2006 and taken to Sepidar prison. As a result of health problems she had problems with her pregnancy and lost her baby. The authorities destroyed her husband's family home in Alhwaz by bulldozers following her arrest. No charges are known to have been raised against any of the women and children detained. We are concerned that your Excellency's Government might be depriving them of their liberty in order to exercise pressure on their husbands.

#### **Response from the Government**

308. On 2 June 2006, the Government, with reference to the letter dated 13 April 2006 of L. Z., informed that, following receipt of the urgent appeal by the Special Rapporteurs on the situation of H.H., M.K., S.K. and S.M., a thorough investigation has been carried out by the judiciary. No legal record of H.H. and S.K. has been found. M.K. and S.N. have been charged with "measures against security of the State" and both have been released on bail on 15 May 2006 and 19 April 2006 respectively.

#### **Allegation letter**

309. On 26 April 2006 the Special Rapporteur has jointly with Special Rapporteur on the question of torture sent an allegation letter to the Government to bring to its attention the information concerning L.M., who had been the subject of previous transmitted communications (E/CN.4/2006/6/Add.1 para. 97 and 112).

310. According to the information received: In February 2006, she was subjected to 99 lashes at the headquarters of the Justice Department in the city of Arak. She was subsequently moved to a women's rehabilitation centre in Tehran, where she is obliged to stay for eight months. On 27 March 2005, the Supreme Court overturned the death sentence, but upheld the sentence of flogging. The case was sent back to the Court of First Instance in Arak for a retrial. In October 2004, L.M. was acquitted of the charge of incest (which carries the death penalty), and of controlling a brothel. However, she was convicted of an "unchaste act with a next of kin (other than fornication)" and was sentenced to 99 lashes.

#### **Urgent appeal**

311. On 16 June 2006 the Special Rapporteur has jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special



Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to the Government concerning hundreds of women and men who participated in the peaceful demonstration, demanding legislative change to ensure equal rights in Tehran.

312. According to the information: Hundreds of women and men gathered at Haft Tir Square in downtown Tehran on 12 June 2006, and participated in a peaceful demonstration in demand for a better recognition of women's rights and to remove discriminatory clauses against women from Iran's legal code.

313. It is reported that prior to the demonstration, the Judiciary summoned and interrogated numerous women's rights activists. On 10 June 2006, agents of Judiciary visited prominent activists at their homes to issue summons. Those who were summoned include N.A.K., P.A., S.T., Z.A. and F.D.M. F.D.M. has been interrogated by judiciary agents of the Revolutionary Court in Tehran for 10 hours. In the morning of 12 June, security forces arrested another human rights activist S.E. at her work.

314. On 12 June 2006, before the demonstration started, the security forces started to beat the participants with batons, sprayed with tear gas and color spray, and took them to custody. A spokesperson for the judiciary has reportedly confirmed that security forces arrested 70 people, including 42 women, to prevent the demonstration to take place. Those who were arrested at the demonstration site include: A.A.M.K., former Member of the Parliament and human rights activist; J.B., D.A., Ms. S.S., B.H., L.M., B.A.A., S.T. and F.S. According to the spokesperson for the judiciary, they are charged with participation in an illegal assembly.

#### **Response from the Government**

315. The Government, with reference to the letters dated 16 June 2006 informed me that according the Judiciary of the Islamic Republic of Iran, regarding illegal demonstrations in Teheran, following that incident all detainees except one have been released. The one who remain in custody is A.A.M.K., who has been charged with disturbing public order and instigation against the state. He enjoys the legal services of three prominent counsels, namely S.E., A.S. and M.S. Investigations about the case are under way and should be sentenced in the court, he has to serve a term of imprisonment.

#### **Urgent appeal**

316. On 28 July 2006 the Special Rapporteur has jointly with Special Rapporteur on the question of torture sent an urgent appeal to the Government regarding A.K., a mother of four children between the ages of nine and nineteen.

317. According to information received: A.K. had an extra marital affair after her divorce request was rejected by the court, reportedly on the basis that she had children with her husband and therefore had to resume living with him. She was sentenced on two charges; the first was for participating in the murder of her husband, for which she received a sentence of 15 years imprisonment; the second was for adultery as a married woman, for which she was sentenced to execution by stoning. Article 83 of the Iranian Penal Code stipulates that the penalty for adultery by a married woman with an adult man is execution by stoning. A woman sentenced to stoning is

to be buried in the ground up to a line above her breasts (art. 102 Penal Code) before being stoned that should not be large enough to kill the person by one or two strikes, nor so small that they could not be defined as stones (art. 104 Penal Code).

318. A.K. has been held in Tehran's Evin prison for five years and should by law serve the remaining ten years of her prison sentence before she is executed. However, in July 2006, she received the order for the implementation of her sentence, and is reportedly due to be executed by stoning before the end of July.

319. In death penalty cases where the charge is adultery, according to article 72 of the Penal Code, if a person confesses to adultery and subsequently repents, the Judge can ask for his or her pardon by the Supreme Leader. Article 4 of the Implementation of Execution Law states that, after repentance, the case must be referred to the Parole Commission. A.K. has reportedly written to the Head of the Judiciary, A.S., asking for forgiveness.

### **Response from the Government**

320. On 4 September 2006 the Government replied to the letter of 28 July 2006 and informed that A.K. has been charged with "adultery" and being an accomplice in her husband's murder" and accordingly sentenced to stoning and 15 years of imprisonment. The case is under review and the final verdict is still pending. The Government informed also that moratorium of Judiciary on stoning sentences is still in place.

### **Urgent appeal**

321. On 2 October 2006 the Special Rapporteur has jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture sent an urgent appeal to the Government regarding six women, including S.G., K.N. and S.M. who have been sentenced to death by stoning for adultery.

322. According to the information received: S.G. (also known as M.), arrested in June 2005, was sentenced to execution by stoning for adultery by a court in Oromieh in June 2006. She is reportedly held in Oromieh prison. Her brothers and husband reportedly murdered a man that they found in her house, and she too was nearly killed after they stabbed her with a knife. S.G.'s case is reportedly being re-examined.

323. K.N. was allegedly forced into prostitution by her husband, a heroin addict who was violent towards her. In 1995, after a severe beating by her husband, she told one of her regular customers that she wanted to kill her husband. The customer allegedly murdered her husband after K.N. took him to an arranged meeting place. He was sentenced to death, but he was pardoned by the victim's family, to whom he paid *díyeh* (blood money). K.N. was sentenced to eight years' imprisonment for being an accomplice to the murder of her husband and to execution by stoning for adultery. She was scheduled to be executed after serving her prison sentence, which was finished two years ago. She has reportedly written to the Judicial Commission for Amnesty to ask for her sentence of execution by stoning to be commuted, and is awaiting a reply. K.N. is detained in Tabriz prison and is at imminent risk of execution.

324. S.M. was sentenced to 15 years' imprisonment for being an accomplice to the murder in January 2004 of her husband A. and to execution by stoning for adultery. During interrogation she said that she was subjected to domestic violence by her husband and that she did not kill him. She added that on the night of the incident after A. killed her husband, she ran away with him because she was scared to stay at home, thinking that her brothers-in-law would kill her. A. was sentenced to death for the murder of S.M.'s husband and to 100 lashes for "illicit relations". The sentences are pending examination by the Supreme Court. It is believed that S.M. is detained in Reja'i Shahr prison, Karaj, near Tehran.

#### **Response from the Government to an urgent appeal sent in 2005**

325. On 14 November 2005, the Special Rapporteur jointly with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture sent an urgent appeal concerning the imminent execution of L.M. According to information received, her death sentence had, at the time this communication was sent, been commuted and she then faced a sentence of flogging and three and a half years in prison. The Supreme Court reportedly overturned the verdict issued in 2004 but upheld the sentence of flogging, sending the case back to the Court of First Instance in the city of Arak for a retrial. The Court of First Instance acquitted L.M. of the charges of incest and controlling a brothel. She was however found guilty under article 637 of the Penal Code of an "unchaste act with a next of kin (other than fornication)." She was sentenced to 99 lashes for this offence. She was also found guilty of "providing the facilities for corruption and prostitution by being available for sexual acts" and sentenced to three and a half years imprisonment for this offence.

326. By letter dated 25 January 2006, the Government informed that L.M. had been ultimately convicted for facilitating corruption by way of sexual acts. Since she did not have a personal residence, the court has ruled that she will reside in a rehabilitation centre of the Social Security Organization at least for eight months to ensure her physical and mental integrity, and to provide her with adequate housing. During this period she will receive social workers' assistance to get prepared for reintegration into the society and to assume her normal life. The allegations of torture are categorically denied.

#### **Observation**

327. The Special Rapporteur would like to thank the Government for its reply to her communications dated 14 November 2005, 10 February 2006, 13 April 2006, 16 June 2006, and 28 July 2006. She would like to ask the Government to keep her informed on any developments with regard to these cases and would also appreciate receiving information concerning other cases addressed in the same communication.

328. The Special Rapporteur looks forward to receiving the Government's reply to her communications of 14 March 2006, 31 March 2006, 26 April 2006, and 2 October 2006.

329. The Special Rapporteur reiterates her appreciation to the Iranian authorities for their cooperation during her visit to the country in January 2005. She looks forward to maintaining a positive dialogue with the authorities and in this context deem it important to reiterate some of the recommendations contained in her mission report (E/CN.4/2006/61/Add.3), including that the Government ensure that the right to a fair trial is fully respected and that all women detained

are brought to trial, with access to a lawyer and legal aid where necessary, without undue delay. The Government must also ensure that punishments do not discriminate against women, that they are proportionate to the offence, and that they are determined by a court of law in accordance with the principles of equality and non-discrimination.

330. The Special Rapporteur welcomes that the moratorium on the execution of sentences of stoning, announced by the Chief of Judiciary in 2002, seems to be still in place. At the same time, however, the Special Rapporteur would like to reiterate her recommendation to the Government to reform the Penal Code and abolish legal provisions foreseeing cruel punishments such as stoning and flogging.

331. Finally, the Special Rapporteur would like to reiterate her recommendation to implement the provisions of the Declaration on Human Rights Defenders in order to ensure that women human rights defenders are able to carry out their work with full autonomy and without being subjected to retaliation by the State or other actors.

### **Iraq**

#### **Allegation letter**

332. On 20 November 2006 the Special Rapporteur and Special Representative of the Secretary-General on the situation of human rights defenders have sent an allegation letter to the Government to bring its attention to the information received concerning the late F. A. J., a women's rights activist from Haweeja who was the head of the women's rights organization Maternity and Childhood.

333. According to information received: On 27 October 2006, a group of about 10 unidentified men broke into F. A. J.'s home in the town of Haweeja, 43 km from Kirkuk. The men shot and killed her.

334. In the past, she had repeatedly received death threats. She had cooperated in the course of her human rights work with international organizations and, before it ceased to exist, the Coalition Provisional Authority. Sources allege that the murderers maybe linked to local Islamic militias.

335. As of 14 November 2006, only two suspects, both men from Haweeja, had been arrested in connection with the murder. Reportedly, F. A. J.'s brother has filed a criminal complaint against at least two more local suspects, named Y.N.A. and K.K.I.

336. Concern is expressed that F.A.J. was murdered because of her activities in the promotion and defence of women's human rights.

#### **Observation**

337. The Special Rapporteur regrets that the Government, while formally acknowledging receipt of her communication dated 20 November 2006, has not provided a substantive reply to the allegations and concerns shared with the Government. She expresses her wish to be kept informed of the outcome of any investigations and prosecutions carried out in relation to this

case and would like to reiterate her interest in receiving a reply from the Government in regard to the allegations submitted.

## **Israel**

### **Urgent appeal**

338. On 20 June 2006 the Special Rapporteur has jointly with the Special Rapporteur on the question of torture sent an urgent appeal to the Government concerning 22-year-old S.I.S. of Tulkarem, currently detained in Hasharon Military Prison.

339. According to the allegations received, S.I.S. was arrested by Israeli forces on 23 September 2005 when she was pregnant. During her arrest, she was removed from her home, forced to strip naked in an Israeli military vehicle and put on a white robe. Following the incident, the soldiers tied her hands and legs with plastic wires. While in the Maskobia Interrogation Center, S.I.S. was subjected to invasive body searches. She was also brutally beaten during her interrogation. The interrogators, who knew she was pregnant, also threatened to beat her to the point of miscarriage. Soldiers placed her husband in a nearby room in order to apply psychological pressure. Her cell was humid and had little ventilation. She said the prison food is of poor quality and quantity and that prison administrators use special lighting to psychologically disturb the prisoners.

340. On 30 April 2006, Israeli forces took S.I.S. from the prison in Telmond to the Meir Kfar Hospital for the delivery of her baby. According to the information received, her legs and hands were cuffed until the moment she entered the delivery room where she gave birth to her first son. Neither the detained husband and father of the child, nor other relatives were allowed to attend the birth operation, which was done by caesarean surgery.

### **Observations**

341. The Special Rapporteur regrets that the Government did not reply to her communication of 20 June 2006 and would like to reiterate her interest in receiving a reply from the Government in regard to the allegation submitted.

## **Kyrgyzstan**

### **Urgent Appeal**

342. On 17 February 2006 the Special Rapporteur has together with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on trafficking in persons, especially women and children, sent an urgent appeal to the Government regarding the alleged trafficking of over 60 women and girls from various Central Asian countries.

343. On 14 February 2006, Kyrgyz security forces reportedly removed more than 60 women and girls from a plane in the southern city of Osh, which was set to transport them to the United Arab Emirates, allegedly for the purpose of sexual exploitation.

344. According to the information received, the women and girls, aged between 17 and 38 - including 58 Uzbek nationals, one Tajik, one Kyrgyz and one Turkmen - were smuggled into Osh in small groups in early February 2006 and had been kept at private apartments prior to the flight. They had passed through passport and customs control at Osh airport and were sitting on an aircraft preparing to leave for Sharjah in the United Arab Emirates when they were intercepted and taken to a detention centre in the city. The basis for detaining the group was illegal crossing of the border and violation of Kyrgyz migration rules. However, the head of the regional office of the Kyrgyz National Security Service (NSS) reportedly declared "We have evidence that all the girls were being trafficked, with trafficking gangs supposed to meet them in the Emirates."

345. Sources estimate that 4,000 women and girls are trafficked annually from or through Kyrgyzstan for purposes of sexual exploitation. Traffickers recruit young women mainly from rural areas in Central Asia promising them jobs as waitresses, nannies, cooks, saleswomen and dancers in the United Arab Emirates or other countries. Upon arrival in the destination country, the women are forced to prostitute themselves. Debt bondage is very often used to subdue the women and perpetuate their exploitation.

346. Osh has reportedly become a regional transit hub for the trafficking of Central Asian women, especially Uzbek and Tajik women. Uzbek women are increasingly trafficked via Kyrgyzstan because of stricter exit controls at Uzbek airports, which aim to curb trafficking in persons but also the free movement of political and human rights activists. Sources also allege that some Kyrgyz law enforcement officials collaborate with the traffickers.

#### **Response from the Government**

347. By letter dated 24 March 2006, the National Security Service of the Kyrgyz Republic (SNB) stated that as part of measures taken to block transborder channels for trafficking in persons, the SNB on 14 February 2006 stopped 60 citizens of the Republic of Uzbekistan, one Turkmenistan citizen and one Kyrgyzstan citizen from traveling on an Osh-Al-Fujairah (UAE) charter flight from Osh airport. The grounds for detaining the citizens of the Republic of Uzbekistan were violations of the regulations on staying in and crossing the State border of the Kyrgyz Republic.

348. It was established in the course of the investigation that the above individuals were being taken for subsequent sale into sexual slavery by organizers of people trafficking. The average age of most of the girls due to be flying out to the United Arab Emirates was in fact 15-30 years. It has to be pointed out that virtually all the Uzbekistan citizens heading to the Emirates were voluntarily going to engage in prostitution to solve their material and social problems.

349. As of 15 February of this year, after filtering work, the decision was taken by the Kyrgyz SNB investigative group to gradually deport and hand over 52 of the detained citizens of the Republic of Uzbekistan and the one Turkmenistan citizen, who had entered the territory of Kyrgyzstan from Uzbekistan, to the Uzbekistan SNB Border Troops. Note was taken of the use by three Uzbekistan citizens of forged passports, as well as the discovery on yet another three citizens of the Republic of Uzbekistan of forged passports and fragments of false passports of the Kyrgyz Republic.

350. On 17 February 2006, the Kyrgyz SNB Investigative Department initiated a criminal case in their respect based on evidence of offences under articles of the Criminal Code. However, taking into account the fact that four of the above-mentioned citizens of the Republic of Uzbekistan are victims of labour trafficking, on 21 February 2006 they were transferred to the custody of the Osh representative office of the International Organization for Migration. Furthermore, as it was established that one of the organizers and links of the transborder channel of people trafficking and illegal migration of citizens of Uzbekistan are representatives of tourist firms, criminal proceedings were also brought against them pursuant to the Criminal Code.

351. With a view to the implementation of the National Plan of Action for Gender Equality in the Kyrgyz Republic, the SNB is carrying out work to prevent and reduce gender violence in society, prohibit trafficking in persons, and also to afford protection and support for victims of trafficking and to raise public awareness of the problem of violence.

352. In particular, from 2004 up to the present the Kyrgyz SNB has initiated 10 criminal cases in relation to such offences and is conducting preventive and educational work through the mass media, as well as cooperating closely with IOM to release from forced detention citizens of the Kyrgyz Republic in countries further abroad.

#### **Allegation letter**

353. On 18 May 2006 the Special Rapporteur has jointly with the Special Rapporteur on the question of torture sent an allegation letter to the Government concerning T.

354. According to the information received, in the week following 14 January 2006 T. was repeatedly summoned by the Department of Internal Affairs to testify as a witness in a case of theft. During one of the sessions, one of the investigators, grabbed her arms, pushed her and began insulting her, calling her a "prostitute" and a "thief". When she asked what she was insulted and beaten for, the investigator hit her on the chest and requested that she deny her testimony, threatening her that he would "do everything possible to put [her] in prison and let [her] die there". T. started bleeding and told the officer that she was pregnant and feared she could lose her baby. The officer allegedly replied that "at a temporary detention cell [she] will conceive another baby". The victim managed to escape eventually.

355. After these events, T. was taken to a Suzak maternity hospital where the head of the maternity department, stated that T. was at "risk of termination of pregnancy." She recovered, however, and on 23 January 2006 she could return home.

356. T. reported these facts to the Oblast Prosecutor's office. However, she feared nothing would be done in this regard since similar complaints against the same officer had been filed with the Oblast Prosecutor earlier, in response to which no action was taken. For this reason, the human rights organization Spravedlivost addressed these cases directly to the Minister of the Interior.

357. Subsequently, the officer in question filed a lawsuit against T. and members of the NGO Spravedlivost, requesting 25,000 US dollars on the basis of alleged defamation.

### **Response from the Government**

358. By letter dated 4 July 2006, the Government informed that a judicial inquiry had been carried out into the alleged beating and insulting of Ms. T. by the staff member of the Internal Affairs Office of Jalalabad province, and by staff members of the security service of the Ministry of Internal Affairs of the Kyrgyz Republic.

359. During the inquiry, the allegations made by T. were not substantiated. Nor was any substance found to the allegations made by T. in previous communications submitted to various offices. The implicated investigator has filed an application with the Jalalabad city court for criminal charges to be brought against T. under articles 128 and 129 of the Criminal Code, for defamation and insult.

### **Urgent appeal**

360. On 13 September 2006 the Special Rapporteur has together with Special Rapporteur on the question of torture sent an urgent appeal to the Government regarding R.I., a 20-year-old Kyrgyz citizen.

361. According to the information received: R.I., 10 weeks pregnant, was arrested on 20 July 2006 and taken to the Isolation Ward of Temporary Allowance (IVS) of Jalal-Abad. She was reportedly beaten by a policeman, chief of the Regional Department of Internal Affairs, in order to force her to denounce her husband, who was suspected of involvement with an extremist organization called "Islamic movements of Uzbekistan". He surrendered to the police immediately after he learned that his wife had been ill-treated.

362. R.I. was subsequently taken to the Kyzyl-Jarsk psychiatric hospital, where she was once again severely beaten on 26 August 2006 by the same policeman. She was immediately transferred to the gynecologic department of the Tash-Kumyr city hospital. There, the doctors certified that her fetus was dead. R.I. is now at the Kyzyl-Jarsk hospital under police surveillance and suspected of "concealment of criminals".

### **Allegation letter**

363. On 23 November 2006 the Special Rapporteur has jointly with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Rapporteur on trafficking in persons, especially women and children, sent an allegation letter concerning R.G.D., an 82-year-old woman living in Anariev, Issyk-Kul.

364. According to the information received, during the night of 22 April 2005, R.G.D. was raped in her home by a man she was able to identify. The alleged perpetrator ordered her to cover her eyes with a blanket and demanded to know whether she recognized him. She denied knowing him, and promised not to report him to the police, fearing for her life. The next morning, R.G.D. reported the incident to the police. She underwent a physical examination, which confirmed that she was raped. R.G.D. then turned to the Oblast Prosecutor's office. The Prosecutor informed her that the suspect was under investigation and that he had provided a written undertaking not to leave the area. He claimed that the case would be sent to court once the investigation was



completed. Later, however, the Assistant Prosecutor in Cholpon-Aty Mairambek informed R.G.D. that her case had been transferred to the Oblast authorities.

365. To date, there has been no trial regarding this matter. Reportedly, the suspect was interrogated by three investigators, but bribed them in order to terminate the investigation. Sources allege that the suspect publicly boasted that he has enough money to guarantee his impunity.

366. The Special Rapporteur understands that impunity for rape and alleged impunity in the other forms of sexual violence has recently intensified. I am concerned about the increasingly widespread practice of “bride-kidnapping”, whereby a woman or girl is taken against her will through deception or force and forced to marry one of her abductors. Sources allege that the abductors are often intoxicated and act in groups, using physical or psychological coercion to compel the woman to “agree” to the marriage. These marriages are reportedly rarely registered with the state. Instead, a Muslim cleric conducts the ceremony or the occasion is privately celebrated. It is further alleged that kidnapped women are often raped by the abductors, but fail to report the crime for fear of repercussions. The abductions occur within all parts of Kyrgyzstan, both urban and rural. The women involved are typically under the age of 25. Some victims are also minors. Despite the fact that article 155 of the Criminal Code, outlaws non-consensual marriage by force or kidnapping, it is reported that the perpetrators are typically not prosecuted for the crime and enjoy impunity for the sexual abuse and sexual exploitation that is committed. I was also informed that the police often fail to even investigate reported cases of bride kidnapping. Sources state that many police officers do not view bride-kidnapping as an issue for law enforcement, but consider it to be a legitimate traditional practice.

#### **Observation**

367. The Special Rapporteur would like to thank the Government for its reply of 24 March 2006 regarding trafficking of over 60 women and girls. She would appreciate receiving follow-up information about the outcomes of the criminal investigations and proceedings which have already been initiated. The Special Rapporteur also thanks the Government for its reply of 4 July 2006 regarding T.

368. The Special Rapporteur regrets not having received a reply to her communication of 13 September 2006 regarding R.I. and neither to her communication of 23 November 2006 regarding R.G.D. and the practice of bride-kidnapping. The Special Rapporteur would therefore like to reiterate her interest in receiving a reply from the Government with regard to the allegations submitted.

### **Liberia**

#### **Allegation letter**

369. On 12 April 2006 the Special Rapporteur has jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on the independence of judges and lawyers sent an allegation letter to the Government concerning the rapes of two girls aged 9 and 12.

370. According to information received: On 27 February 2006, a 9-year old girl was allegedly raped by a 19-year old man in Lofa County. When the family reported the matter to the authorities, the Circuit Sheriff Court allegedly tried to extort a bribe of LD 350 from the victim's father to arrest the alleged perpetrator. It is furthermore alleged that the Magistrate of Voinjama also demanded a payment of LD 300 to issue an arrest warrant. The judge reportedly claimed that the money was needed to cover the cost of transporting the alleged perpetrator to jail.

371. On 7 March 2006, after the victim's father had paid LD 100 to the Magistrate, the alleged perpetrator was arrested and sent to pre-trial detention. The next day, the prison authorities released the man pursuant to a written order by the Magistrate to the prison authorities stating that the man "is under bond in court with two sureties". Since then the authorities have reportedly not taken any further steps in the matter.

372. In March and April 2005, J.K., a 48-year old Pastor of the Living Word Pentecostal Church, allegedly raped A.K., a 12 year-old girl from Todee District (Montserado County), on three separate occasions using physical force to overcome her resistance. J.K. allegedly threatened the victim to kill her, if she told her mother about the rapes. A.K. only told her mother about the alleged rapes, when the mother discovered that she was pregnant. When the mother confronted J.K. about the issue, he allegedly gave her 250 Liberian dollars that was meant to arrange an abortion.

373. The family reported the alleged incidents to the Careysburg Police Detachment. However, the police initially decided that there was no need to arrest J.K. or initiate criminal proceedings against him since he had taken steps to settle the issue amicably with the victim's family. Following an intervention by the United Nations Mission in Liberia (UNMIL) J.K. was arrested, taken to the Careysburg Magistrates' Court and later transferred to the City Court in Monrovia.

374. On 16 May 2005, a pre-trial conference was held in the chambers of the Stipendiary Magistrate of the City Court, where the defendant's counsel attempted to settle the case by offering a promissory note signed by J.K. to the victim's family. The document contained a pledge to provide support to the victim during her pregnancy and take financial responsibility for the care of the child. The family refused the settlement offer and requested the Assistant County Attorney to proceed with the prosecution of the case. The case was forwarded to the First Judicial Circuit Court Criminal Court "A" for trial. Reportedly, the grand jury hearing the case later attempted to extort LD 1,500 to allow the victim to testify. When the family refused to pay the requested bribe, the grand jury refused to hear the case.

### **Observations**

375. Special Rapporteur regrets for not having received a reply to her communication of 12 April 2006 and would like to reiterate her interest in receiving a reply from the Government in regard to the allegation submitted.

## Libya

### **Allegation letter**

376. On 10 March 2006, the Special Rapporteur has jointly with Special Rapporteur on the sale of children, child prostitution and child pornography sent an allegation letter to the Government concerning the arbitrary detention of women and girls in social rehabilitation facilities.

377. According to information received, the General Secretary of Social Affairs supervises and administers several so-called social rehabilitation facilities, including the Benghazi Home for Juvenile Girls and the Social Welfare Home for Women in Tajoura. According to an internal bylaw, the facilities are to provide housing for “women who are vulnerable to engaging in moral misconduct.”

378. Women and girls detained in these facilities include women who are accused or have been convicted of having transgressed Law No. 70 (1973) criminalizing extramarital sexual relations. Others have already served their sentences but are transferred to the facilities because no male family member would take custody of them. In addition, there are women and girls, including victims of rape, who have never been charged or convicted of a crime, but have to fear ostracism or violence, because their families suspect them of having engaged in extramarital sexual relations.

379. The majority of women and girls are forced to undergo intrusive and degrading virginity tests before being committed to a facility.

380. Women and girls, including those who were never charged or convicted, are reportedly detained in the social rehabilitation facilities for indeterminate periods of time and physically prevented from leaving. Even adult women are usually only allowed to leave if their father or another close male relative agrees to take custody of them. Alternatively, they can obtain their release through marriage, often to a stranger who specifically approaches the facility looking for a bride.

381. The facility determines which women “qualify” for marriage based on their “moral character”. Over the past five years, nineteen women were reportedly married this way. The facility personnel are authorized to discipline detained women and girls with solitary confinement of up to seven days. Women and girls have reportedly been sent into solitary confinement on grounds such as “talking back” or smoking. Girls in the Benghazi Home also reported that they had been hand-cuffed while in solitary confinement.

382. Finally, it is reported that girls in the Benghazi Home are not given access to education, except for religious instruction and sewing lessons.

### **Response from the Government**

383. On 23 March 2006, the Government replied and stated that the Special Rapporteurs’ statements on social rehabilitation facilities show little awareness of the values of Libyan society. They bespeak ignorance of the Islamic values that prevail in that society, and of the customs and traditions that play an important role in the forging of relationships among the

individuals in society and the shaping of their view of reality. By way of illustration, the custom of avenging honour by means of honour killings is found in some regions. Similarly, a woman suspected of immoral conduct tends to be regarded with abhorrence and rejected by her family. These customs, incidentally, are also found in other States in the region. The competent authorities are endeavoring to eradicate them by changing the concepts associated with them through heightened awareness, outreach activities and education. Nor do the customs and traditions of Libyan society accept that women and girls should be left to their fate in the street, with unknown associates. Consequently, it is essential to develop methods of treatment and measures to minimize the repercussions of these matters.

384. Children's homes, boys' homes, girls' homes, homes for the aged and infirm, homes for women (social rehabilitation facilities) and correctional facilities for juveniles are social institutions. With the exception of correctional facilities for juveniles, they are not penal or correctional institutions. All of them are run by the Social Solidarity Fund, which is responsible for the welfare of incompetent persons and young persons who have no legal guardian and no means of leading a life of dignity. These various homes provide integrated health and social care free of charge in a framework of solidarity among the individuals who make up society, and in accordance with the values of the blessed Islamic Sharia and the principles of the Third Universal Theory.

385. These facilities, their functions and the legislation that regulates their work may be summarized as follows. Social rehabilitation facilities provide safe havens for women who have no means of support and nowhere to go, or women who are charged with a criminal offence and consequently must be detained pursuant to judicial procedures in one of these facilities, having regard to their circumstances and the circumstances of the offence with which they are charged. Their situation in the facility is quite different from what it would be in an institution of correction and rehabilitation (prison) for women: the purpose of their detention is to avoid an adverse impact on their social situation, from the standpoint of the traditions and customs that prevail in Libyan society. Women in the first-mentioned category enter the facility voluntarily, for various reasons: Some of them have no homes because they have quarreled with their families, especially those who are suspected of having engaged in immoral behaviour, while others have no means of earning a decent living and caring for their families, perhaps because of the death of the person who was supporting them or other family members. Women in this category have the right to leave the facility whenever they consider it appropriate to do so.

386. These social measures arise from Libyan society's respect for women and its efforts to preserve their dignity and ward off any danger of their exploitation by others. It should be noted that the legislation governing these facilities requires the preparation of skills development programmes for women residents who have no particular skills in order to enable them to obtain jobs. Educational programmes are provided for them as well, and those who wish are allowed to complete their schooling. In addition, the facility offers a job placement service and helps them to found families of their own by facilitating marriage for those whom so desire, or by reconciling them with their families.

387. Women in the second category are those who are being held as a judicial measure. They live in a separate wing of the facility. They are there because they are charged with such offences as homicide in connection with a traffic accident. Such matters as how long they may be detained in the facility and means of supervision are regulated by the Code of Criminal

Procedure. The rules governing precautionary detention set forth in the Code apply in these cases.

388. Residents of the Home for Juvenile Girls fall into two categories. The first category comprises two groups: (a) a group consisting of girls who have been ordered held in precautionary detention by the Office of the Public Prosecutor pending investigation of charges against them, or are serving a sentence imposed by a juvenile court under the Penal Code and the Code of Criminal Procedure; and (b) a group consisting of girls whom a juvenile court has assigned to residence in the Home because they have been found to be homeless, in accordance with the provision of the Homeless Juveniles Act.

389. The second category comprises girls who have served a sentence or completed court ordered administrative measures, and have subsequently been transferred to the Home (where they live in a separate wing) because their families have refused to have them back. The question then arises as to how this situation should be dealt with. Should these girls be left to their fate in the streets, with nowhere to live, no families and no means of support, and possibly at risk of revenge measures? Or should they be placed in a social institution until they come of age, at which time they may decide whether to remain in the Home or to leave it? If these juvenile girls are to be protected from exploitation, crime and vengeance, it is imperative for them to be placed in the Home, where they receive education, training and skills development that will enable them to become integrated safely into society or try to return to their families.

390. The Government concluded its response by reaffirming its commitment to human rights.

#### **Observations**

391. I would like to thank the Government for its reply to the allegation letter sent on 10 March 2006.

#### **Maldives**

##### **Urgent appeal**

392. On 10 April 2006 the Special Rapporteur has jointly with Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to the Government to bring its attention to the information regarding F.S. who is an active member of the opposition Maldivian Democratic Party (MDP).

393. According to information received: On 19 February 2006 at around 2.30 a.m., twelve policemen in plain clothes came to the house of F.S. in Male'. When her mother opened the door, three policemen forced their way into the house. They proceeded to arrest F.S., who was only wearing a T-Shirt and pants without her underwear at the time of the arrest. She pleaded with the police to allow her to get appropriately dressed before being taken away but the police refused, apparently trying to humiliate the young Muslim woman. As of 6 April 2006, F.S. was reportedly still in detention.

394. On 29 March 2006 at around 9.30 p.m., a number of women supporters of the MDP gathered at Mirivan Park in Male' to plan a demonstration against abusive police behaviour during the arrest of female suspects, when a group of young men locally known as parteyas lurked

pellets of oil and urine at them. It is alleged that the young men acted on the instruction of certain government members.

395. Concern is expressed that the arrest and detention of F.S. may represent an attempt to intimidate and prevent her from promoting human rights values in her work. Concern is also expressed that the incident of 29 March 2006 may represent an attempt to further harass, humiliate and prevent women human rights defenders from peacefully demonstrating against abusive police behaviour during the arrest of female suspects and publicly raising human rights concerns.

#### **Communication received from the Government**

396. By letter dated April 2006, without explicit reference to the communication sent on 10 April 2006, the Government informed the Special Rapporteur that the Government had published on 27 March 2006 a "Roadmap for the Reform Agenda" entitled "Ushering in Democracy." The document will form the framework for the Government's reform work towards implementing the Reform Agenda announced by President Gayoom at the commencement of his current term of office.

#### **Observations**

397. While thanking the Government for the information provided on the democratization process, the Special Rapporteur regrets not having received a response on the case of F. S. She would like to reiterate her wish to receive a response about this case.

### **Mauritania**

#### **Appel urgent**

398. Le 8 août 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants et La Rapporteuse spéciale sur la traite des personnes, en particulier les femmes et les enfants, a envoyé un appel urgent au Gouvernement concernant la situation de plusieurs personnes qui seraient maintenues en esclavage en Mauritanie.

399. Selon les informations reçues, six enfants et deux femmes seraient maintenus en esclavage et répartis dans des foyers à Nwar, département de Tidkikja, dans la région du Tagant.

400. Les personnes retenues dans le foyer de Ehl Abidine Ould Saka sont S., 20 ans, O. L., orpheline de 15 ans, et S., orphelin de 10 ans, T., orpheline de 5 ans, et F., orpheline de 6 ans. Le foyer de Ehl Hamady Ould Saka retiendrait O., une femme d'environ 70 ans ainsi que deux garçons, E.K.O.M., 13 ans, et B.O.M., âgé d'environ 16 ans.

401. Dans cette affaire, une organisation non-gouvernementale (ONG) qui lutte contre l'esclavage aurait été confrontée à l'opposition des autorités, dont le gouverneur adjoint de la région du Tagant qui l'aurait accusée de créer de faux problèmes et de politiser les faits. Le Procureur de la République a quant à lui déclaré que "l'esclavage n'existe pas et ceux qui prétendent le contraire peuvent être passibles de poursuites judiciaires" avant de se rendre dans

les foyers où sont retenues les personnes susmentionnées. Après son intervention, seule une vieille femme aurait été libérée du foyer de Ehl Hamady Ould S aka.

402. Dans cette région du Tagant où seraient retenues les personnes susmentionnées et où les militants anti-esclavagistes seraient accusés de nuire à l'image du pays, un sentiment d'impunité règne et l'esclavagisme demeure. Les autorités chargées de l'application des lois refuseraient souvent de reconnaître des situations d'esclavage. En Mauritanie, la possibilité d'une éradication de ce fléau dépendrait surtout de la volonté des autorités administratives et judiciaires d'appliquer la législation nationale et les normes internationales dans leur pays.

403. En 1981, suite à la publication d'une ordonnance, l'esclavage a été aboli en Mauritanie. Cependant, aucune loi d'application de ce texte n'aurait été votée afin de parvenir à une abolition effective. Cette ordonnance, qui proclame l'illégalité de l'esclavage, n'en donne pas de définition précise et ne l'érige pas non plus en infraction pénale.

### **Réponse du Gouvernement**

404. Par lettre en date du 30 octobre 2006, le Gouvernement a répondu à la communication. Le Gouvernement affirme que le Département de la Justice a immédiatement après avoir reçu cette communication, diligenté une enquête dès que les allégations ont été portées à sa connaissance. Cette enquête a été menée sous la direction du Procureur de la République territorialement compétent, assisté par la Gendarmerie. L'enquête a révélé que les allégations avancées n'étaient pas fondées. Le Gouvernement a indiqué que les personnes citées étaient des citoyens libres qui ne souffraient d'aucune forme de discrimination ni de contraintes. Elles ne se plaignaient de rien et étaient libres d'aller et venir là où elles le désiraient.

405. Dans un souci de transparence, le Procureur de la République a associé à l'enquête des représentants de l'ONG qui est à l'origine cette affaire. L'esclavage a été aboli par la Puissance coloniale. Cette abolition a été confirmée en 1961 par la première Constitution de la République islamique de Mauritanie. La Constitution du 20 juillet 1991, actuellement en vigueur, reprend la même disposition. Également, le Code pénal prévoit de lourdes peines pour les personnes coupables d'arrestation, de détention ou de séquestration arbitraires. Le Code du travail a été révisé en 2004 sur recommandation de l'Organisation internationale du travail (OIT) afin de renforcer et d'élargir, entre autres, ses dispositions relatives au travail forcé. La Mauritanie a en même temps ratifié les principaux instruments relatifs aux droits de l'homme et les Conventions fondamentales de l'OIT. Ces instruments et Conventions ont la primauté sur le droit interne, en vertu de l'article 80 de la Constitution, et peuvent être invoqués devant les tribunaux.

### **Observations**

406. Le Rapporteur spécial voudrait remercier le Gouvernement pour sa réponse du 30 octobre 2006.

## Mexico

### Carta de alegaciones

407. El 6 de marzo de 2006, la Relatora Especial, juntamente con el Relator Especial sobre la independencia de los magistrados y abogados, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envié una carta de alegaciones sobre el caso del abogado y defensor de derechos humanos S.D.A.M.

408. El 26 de enero de 2006 S.D.A.M. fue asesinado con un arma de fuego por hombres no identificados, mientras conducía en el centro de Ciudad Juárez (Estado de Chihuahua). En efecto, según la información recibida, en dicha fecha el vehículo del S.D.A.M. fue interceptado por otro vehículo tripulado por varios hombres no identificados, quienes le dispararon en repetidas ocasiones. Durante dicho ataque resultó herido uno de sus acompañantes. La Comisión Interamericana de Derechos Humanos ya había ordenado al Estado de México que tomase todas las medidas necesarias para proteger la integridad de S.D.A.M.

409. S.D.A.M. era un reconocido abogado defensor de derechos humanos de Ciudad Juárez. Antes de su muerte había defendido a Víctor Javier G.U., quien al parecer habría sido torturado con el fin de que confesara la autoría del homicidio de ocho mujeres en 2001. Víctor Javier G.U. fue condenado a 50 años de prisión. Asimismo, según la información recibida, la familia de S.D.A.M. habría recibido varias amenazas anónimas de muerte, con el fin de que éste no continuara con la defensa del Víctor Javier G.U.. Este último fue liberado como resultado de un recurso de apelación.

410. Por otra parte, otro abogado que participó en la defensa de los acusados del caso de los ocho homicidios en Ciudad Juárez, M.E.A., habría resultado muerto en una persecución llevada a cabo por la policía en febrero de 2002. Su defendido, G.G.M., murió en prisión en el año 2003.

### Respuesta del Gobierno

411. El 16 de junio de 2006, el Gobierno respondió y transmitió la siguiente información:

412. El homicidio ocurrió el 25 de enero de 2006, y a partir de este hecho la Procuraduría General de Justicia del estado de Chihuahua (PHJCH) inició la averiguación previa 1102-3212/06, cuya integración se encuentra supervisada directamente por la Procuradora General, la que además dispuso la conformación de un grupo especial de investigación integrado por agentes del Ministerio Público y elementos de la Agencia Estatal de Investigación, capacitados particularmente en metodología técnico-científica.

413. La necropsia se realizó el mismo día de los hechos por el personal especializado de los Servicios Periciales de la PGJCH, quienes determinaron que la causa de la muerte había sido una laceración encefálica y choque hipovolémico consecutivo a heridas producidas por proyectiles de arma de fuego en cráneo, cuello y tórax.

414. La Directora de Atención a Víctimas del Delitos, y personal especializado en materia de psicología, estuvieron pendientes de brindar el apoyo necesario a los deudos desde el momento



en que la autoridad recibió noticias del hecho. Además, se le acompañó durante el proceso de identificación y en las exequias.

415. El 31 de enero de 2006, la Procuradora General de Justicia se reunió con los parientes de S.D.A.M. para informarles acerca de la investigación y para presentarles a los encargados de realizarla. Asimismo, se les ha brindado información oportuna de los progresos realizados dentro de la investigación.

416. El Ministerio Público determinó, para efectos de protección y con fundamento en lo ordenando en el inciso a del artículo 120 del código de Procedimientos Penales del Estado de Chihuahua, establecer las medidas particulares de vigilancia de los domicilios de los familiares de S.D.A.M.

417. Se han practicado diversas diligencias con el objeto de recolectar las pruebas pertinentes para la comprobación de la probable responsabilidad de quien perpetró el delito; para tal efecto, se han recabado diversos testimonios y se han establecido diversas líneas de investigación.

418. Ya que aún no se ha ejercido la acción penal en contra de ninguna persona, no es procedente el otorgamiento de la reparación del daño, pero en cuanto se haya cumplido con los requisitos establecidos por la ley, el Ministerio Público promoverá lo necesario para que se haga efectiva la reparación del daño.

#### **Llamamiento urgente**

419. El 18 de julio de 2006, la Relatora Especial, juntamente con el Relator Especial sobre la independencia de los magistrados y abogados y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, transmitió un llamamiento urgente al Gobierno sobre el caso de S.M.J., estudiante indígena de 20 años, quien vive en el Estado de Guerrero. Según la información recibida:

420. El 6 de abril del 2005, en su camino hacia la escuela, S.M.J. fue violada por un agente de policía, quien le puso una pistola en la espalda y la obligó a tener relaciones sexuales. La estudiante pudo observar a su captor quien portaba un uniforme de policía. Después de la violación, su captor la amenazó diciéndole que sería inútil que denunciara los hechos ante las autoridades puesto que él trabajaba en la policía y no recibiría ninguna sanción.

421. Los familiares de S.M.J. denunciaron los hechos ante el Ministerio público investigador. El mismo día fue detenido A.G.A., un policía preventivo del Municipio de Tlapa de Comonfort, quien fue reconocido por la víctima sin temor a equivocarse como responsable del delito de violación. El 7 de abril de 2005, A.G.A. fue puesto a disposición del Juzgado de Primera Instancia en materia Penal de la ciudad de Tlapa, bajo el cargo judicial de violación, en el expediente penal 58/2005-III. Sin embargo, hasta el día de hoy el juez no ha dictado sentencia.

422. Según la información recibida, durante el proceso judicial el juez no ha actuado de manera imparcial. Por una parte, se alega que éste tuvo una conducta hostigante hacia S.M.J., puesto que la obligó en tres ocasiones a enfrentarse a su agresor, haciendo preguntas sobre su vida privada, y poniendo varias veces en duda sus alegaciones, a pesar de que ella había manifestado su total certidumbre frente a los hechos. Por otra parte, el juez habría recurrido a métodos de dilación

Así, se habría negado a resolver el caso aduciendo que aún faltaban pruebas por practicar, a pesar de que ninguna de las dos partes ha solicitado mayores medios probatorios. Asimismo, el Juzgador de oficio habría pedido recientemente la práctica de una prueba de muestras de semen del inculpado; sin embargo, esta prueba no tendrá ninguna utilidad, puesto que a pesar de que hace más de un año en el cuerpo de Socorro se detectó semen de su violador, ya ha pasado demasiado tiempo para que se pueda determinar el ADN de dichas muestras.

### **Respuesta del Gobierno**

423. El 13 de septiembre de 2006, el Gobierno transmitió la información siguiente:

424. S.M.J. presentó una denuncia ante la autoridad ministerial el 6 de abril de 2005. Derivado de dicha denuncia, la autoridad ministerial dio inicio a una averiguación previa por el delito de violación cometido en contra de S.M.J., perpetrado por A.G.A., Policía del Municipio de Tlapa de Comonfort, Estado de Guerrero. Una vez recabada la declaración ministerial de S.M.J., el ministerio público dio fe del estado físico de víctima, del billete que exhibió la agraviada en su declaración, e instruyó al médico legista a realizar el certificado médico ginecológico, que arrojó las siguientes conclusiones:

425. Según el certificado médico ginecológico, S.M.J. "... es púber, presenta huellas de violencia física; tres excoriaciones dérmicas de 2.5 cm x 3mm. de forma separada y oblicua, ubicada en región externa del muslo izquierdo a nivel del tercio medio; presenta sugilación (chupetón) de 1.5cm x 5mm ubicado en cuadrante extremo seno derecho; presenta dos desgarros de características recientes, ubicadas a las 6 y 11 horas comparativamente con la carátula de un reloj; presenta huellas de cópula reciente, no presenta, signos ni síntomas de enfermedad venérea; no presenta signos ni síntomas de embarazo; presenta edema (inflamación moderada) e hiperemia (enrojecimiento moderado) de vulva y cavidad vaginal, observándose líquido seminal en moderada cantidad en cavidad vaginal, con presencia de arena en genitales externos y en boide interno de ambos glúteos. A la palpación refiere dolor de mediana intensidad de región púbica; asimismo, se tomó muestras de cavidad vaginal para la búsqueda e identificación espermática".

426. Las muestras de exudado vaginal de la agraviada fueron remitidas al área de Servicios Periciales, para que se designara perito en materia de química forense y que previo estudio y análisis de las muestras, determinara la existencia de líquido seminal en las mismas. De acuerdo a los resultados obtenidos, se identificaron espermatozoides de 2 a 3 por campo de cavidad vaginal.

427. El 6 de abril de 2005, A.G.A. fue puesto a disposición del ministerio público, como presunto responsable del delito de violación. En ese mismo acto se ordenó la retención legal y practicó las siguientes diligencias:

- a) Declaración ministerial de dos testigos;
- b) Dictamen en materia de química forense;
- c) Inspección ocular en lugar de los hechos;
- d) Declaración ministerial del inculpado.

- e) Dictamen pericial en materia de psicología y;
- f) Dictamen de criminalística de campo y fotografía forense.

428. Con base en el material probatorio reunido en la indagatoria, el 8 de abril de 2005 el ministerio público consignó a A.G.A., quien ejercitó acción penal en su contra, por el delito de violación cometido en agravio de S.M.J.

429. El 14 de abril de 2005, la autoridad judicial resolvió su situación jurídica, dictando auto de formal prisión dentro de la causa penal 58/205-III, por el delito en comento.

430. No, ya que actualmente el proceso penal se encuentra en la etapa de instrucción; esto es, el juez penal se encuentra en la etapa de oficio y desahogo de pruebas aportadas por el defensor A.G.A. así como la víctima. Posteriormente, la autoridad judicial dictará sentencia en la que se fijará la reparación del daño.

### **Observaciones**

431. La Relatora Especial agradece al Gobierno la información proporcionada.

432. La Relatora Especial queda en espera de información adicional sobre los resultados de los investigaciones en el asesinato de S.D.A.M. transmitido el 6 de marzo de 2006. La Relatora Especial desea hacer referencia al informe sobre su visita en México (E/CN.4/2006/61/Add.4). En esto, concluye que las autoridades estatales como las federales podrían hacer bastante más para acabar con la impunidad en la Ciudad Juárez y evitar nuevos asesinatos y presenta una serie de recomendaciones al Gobierno.

433. En cuanto al caso de S.J.M., la Relatora Especial aprecia recibir información adicional sobre los resultados de la acción penal en contra de A.G.A.

## **Morocco**

### **Lettre d'allégations**

434. Le 13 juin 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants, et le Rapporteur spécial sur la traite des personnes, en particulier les femmes et les enfants, a envoyé une lettre d'allégations concernant des abus perpétrés contre des enfants travaillant comme domestiques.

435. Selon les informations reçues, il semblerait qu'un nombre élevé d'enfants domestiques dans des maisons privées commencent à travailler avant d'avoir atteint l'âge de 10 ans. Selon les statistiques officielles provenant d'une enquête sur la main d'œuvre datée de l'an 2000, il semblerait que 11 % des enfants âgés de 7 à 14 ans seraient actifs dans le marché du travail.

436. Cette situation concernerait surtout les filles, âgées de moins de 15 ans, appelées communément « petites bonnes ». La situation de leur exploitation économique avait déjà été

signalée dans le rapport de la visite de la Rapporteuse spéciale de l'époque lors de sa visite au Maroc en 2000 (. E/CN.4/2001/78/Add.1, par.10 à 20).

437. Les informations reçues précisent que les « petites bonnes » employées comme domestiques ou servantes dans les maisons privées seraient originaires de régions rurales du Maroc où la pauvreté et le manque d'accès à l'enseignement seraient à l'origine de leur embauche comme domestiques. La majorité des enfants seraient recrutés à travers des intermédiaires, des agents recruteurs connus comme « samasra » qui, sur sollicitation des parents ou autres membres de la famille des enfants accepteraient de « placer » ceux-ci chez un employeur à travers leurs connaissances, amis, contacts ou voisins. Dans d'autres cas, les enfants seraient placés directement chez l'employeur par les parents eux-mêmes.

438. Les enfants travaillant comme domestiques recevraient un salaire très minime (l'équivalent de 0,04 \$ à 0,11 \$ par heure) ou, dans de nombreux cas, ne seraient pas payés du tout, l'employeur se chargeant seulement de les loger et les nourrir et de leur acheter parfois quelques biens nécessaires. La majorité des enfants embauchés comme domestiques seraient astreints à des horaires de travail exténuants, pouvant aller de 14 à 18 heures par jour. Beaucoup de ces enfants seraient victimes d'abus physiques ou émotionnels de la part de leur employeur. Certaines filles seraient aussi victimes d'abus sexuels de la part de leur employeur.

439. Bien que l'emploi des mineurs de moins de 15 ans soit interdit par le Code du travail, le travail des enfants domestiques se ferait de façon informelle et ils ne seraient pas protégés par les normes du Code du travail. De plus, les inspecteurs du travail ne seraient pas habilités à entrer dans des maisons privées et enquêter sur les violations aux normes du Code du travail qui interdit sous toute forme le travail des mineurs de moins de 15 ans, et les autres formes d'abus dont seraient victimes les enfants employés comme domestiques.

440. De plus, les pouvoirs publics, notamment la police, le parquet et les juges seraient réticents à appliquer les sanctions prévues dans le Code du travail pour l'emploi de mineurs en dessous de l'âge autorisé et de celles prévues dans le Code pénal interdisant les abus dont seraient victimes ces enfants. Les parents de ces enfants seraient aussi réticents à interdire des poursuites au nom de leurs enfants, étant donné que de telles procédures sont coûteuses, longues et ne garantissent aucun résultat ni bénéfice. De plus, dans beaucoup de cas ce sont ces mêmes parents qui ont placés leurs enfants à travailler comme domestiques.

441. Les informations reçues concluent qu'il serait difficile, voire impossible pour les enfants placés comme domestiques de pouvoir se soustraire à cette exploitation. Beaucoup craindraient des actes violents ou d'autres représailles de la part de leur employeur s'ils étaient rattrapés après leur fugue. Les filles auraient aussi peur d'être attaquées ou abusées seules dans la rue. Certains d'entre eux profiteraient de fêtes publiques ou de jours fériés pour pouvoir sortir de la maison et rentrer dans leur famille.

#### **Observations**

442. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à sa communication du 13 juin 2006.

## Myanmar

### Allegation letter

443. On 28 March 2006 the Special Rapporteur has jointly with the Special Rapporteur on the situation of human rights in Myanmar sent an allegation letter to the Government concerning the trial against the alleged rapists of M.S.S., a 30-year old mother of three children residing in Myathida ward, Twente town, Yangon Division.

444. According to information received, on 12 June 2005 at around 10.30 p.m. three police officers allegedly raped M.S.S. in the Nyaung area of Twente town. Subsequently, the two police constables offered her money so that she would not press criminal charges. When she refused, the investigating police of Twente Township Police Station subjected her to hostile interrogations and other forms of intimidation. Nevertheless, she managed to register her case in Twente Township court.

445. There are reports about undue delays in the trial against the two constables. According to section 78 (c) (d) of the Attorney General Regulations, it is required that a criminal case is opened within six months after the offence occurred. In the event that this is not the case, the concerned law office must report on the reasons for the delay and superior authorities may give instructions to expedite the case. However, the Twente Township Court, with Judge U Zaw Zaw Thein presiding, reportedly opened the proceedings only on 2 January 2006.

446. As of 1 March 2005, long after the prosecution had closed its case, only the three defendants themselves had been heard by the court. Ostensibly to further delay the proceedings, the lawyer of the accused has called seven witnesses who reportedly cannot contribute any relevant testimony. Nevertheless, the court has admitted all seven witnesses.

### Observations

447. The Special Rapporteur regrets for not having received a reply to communication of 28 March 2006. The Special Rapporteur would like to reiterate her interest in receiving a reply from the Government in regard to all allegations submitted in 2006 and 2005.

## Nepal

### Allegation letter

448. On 6 February 2006 the Special Rapporteur has jointly with the Special Rapporteur on the question of torture sent an allegation letter to the Government of Nepal concerning police harassment and beatings of persons who are men by birth but identify as women (known as *metis* in Nepal).

449. In a communication dated 7 November 2005, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women already brought to the Government's attention allegations that police had harassed and physically abused several *metis*. Since then, additional attacks have reportedly occurred.

450. Early in the morning on 7 December 2005, police from the Shore Khutte station raided a hotel in the Thamel district of Kathmandu. The raid was reportedly a retaliatory measure against the hotel for refusing to provide a room free of charge to four policemen where they intended to have sexual relations with two *metis*. During the raid, eleven *metis* were arrested. Eight were held without charge for five days, before they were released. The other three were even detained for six days.

451. On 27 December 2005, a *meti*, S., was detained in Shore Khutte Police Station. She was not promptly informed of the reasons for her arrest and detention, was not given access to a lawyer and did not have adequate access to a toilet.

452. On 28 December 2005 at about 1.30 a.m., police arrested S., another *meti*, and took her to Shore Khutte police station. Police at the station verbally abused her and commanded her to strip. When she refused, they stripped her forcibly of her clothes and touched her genitals while mocking her. They also threatened to cut her hair off as punishment for wearing women's clothes. She was released the next day.

453. On 31 December 2005 at about 11 p.m., police from Shore Khutte police station detained a *meti* from the Thamel district. One policeman beat her with a bamboo baton calling her derogatory names. She escaped, but her right hand is reportedly swollen and badly bruised.

454. On 3 January 2005 at about 10 p.m., three *metis* were walking in the Thamel district, when four police from Durbar Marg police station reportedly saw them and shouted: "*Metis*! Kill them!" One *meti* was beaten with a baton on her back; one policeman pulled his gun and pointed it at her, threatening that "These *kyras* [local Nepali term for transgender persons] pollute the society and must be cleared out." The other two *metis* were also severely beaten. All three reportedly had bruises on various parts of their bodies.

#### **Allegation letter**

455. On 13 April 2006 the Special Rapporteur has together with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on trafficking in persons, especially women and children, sent an allegation letter to the Government concerning the trafficking and sexual exploitation of Nepalese girls in brothels in Calcutta and Mumbai, India.

456. According to the information received, Nepalese girls, at an average age of 14 to 16 years, are trafficked from Nepal to brothels in Calcutta and Mumbai where they are required to work as prostitutes in debt bondage. The girls are trafficked against their will and without knowledge of their destination. The traffickers are reported to be Nepalese men and women, who sell the girls to (Nepalese) brothel owners in Calcutta and Mumbai, at a price of approximately 60,000 to 70,000 Indian rupees (US \$ 1,360-1,590) in Calcutta and 100,000 to 120,000 Indian Rupees (US \$ 2,270- 2,720) in Mumbai. There is no evidence of extensive networks of traffickers and trafficking seems to take place through an informal network with the collaboration of community members, employers, local officials, border officials and others such as those who operate 'safe houses' where trafficked girls are kept prior to their sale.

457. Initially the girls are not taken to the brothels directly, but given some time to adjust to their new situation, in outside homes, sometimes owned by the brothel owner. After being told the work that is required of them, how to dress and behave and after being convinced that they themselves, or their families, have incurred a debt which they will have to pay off by working as a prostitute after which they are 'free' to leave, the girls are put to work as *tsukri* (the Bengali word for child in slavery or debt bondage).

458. When they start to work as *tsukris*, the girls are usually aged between 15 to 18 years. They often work in brothels that are referred to as 'bungalows': brothels that occupy a flat, usually on the first or higher floors of a building, often with a shop on the ground floor. The bungalow is distinguished by a charnel gate (a sliding iron accordion gate) at the entrance to the brothel. When locked, the charnel gate is virtually impenetrable; making escape from the brothel impossible for the *tsukris* kept inside. The area within Calcutta that contains most bungalow-type brothels with *tsukris* is Sonagachi; whereas in Mumbai brothels with *tsukris* can be found mainly in Kamathipura, although due to police raids these types of brothels are said to have moved to other cities in India or areas outside the known brothel areas.

459. It is reported that while clients of the brothels do not have a specific preference for *tsukris*, they do prefer Nepalese prostitutes to other prostitutes.

460. Under the *tsukri* system the brothel owner retains all of the fees paid by clients for the services provided to them by the *tsukris*. Considerable profits accrue from the use of *tsukri* system: brothel owners are said to earn four to twenty times the purchase price of the *tsukri* over the period of her servitude. The initial purchase price is recovered by the brothel owner, on average, in little over five and a half months. A Nepalese *tsukri* is also said to cost less than an Indian *tsukri* and because of continued client demand for Nepalese girls, the returns are higher. On occasion the brothel owner may also offer 'special services' such as a *tsukri's* virginity or oral or anal sex as well as sex without a condom, at a special price. The total period the girls spend in confinement as *tsukris* varies from two to ten years.

461. After paying their 'debt' and being released from bondage, it is often very difficult for *tsukris* to go back to Nepal. They fear isolation and reprisals from family and community members. Many of them take up work as free-agent sex workers, earning their own fees by doing street prostitution or paying tenancy to brothel owners. Escape prior to being released is not only very difficult because the girls are kept in confinement; there is also fear of being brought back to the brothels, either by police or other community members followed by severe physical punishment, as well as a more general fear of 'India outside' since few *tsukris* had a clear idea of where they were and could not speak the language and were easily recognized as foreigners.

#### **Response from the Government**

462. On 23 January 2007, the Government responded to the letter dated 13 April 2006 informing the Special Rapporteur that Nepal had adopted a series of both policy and programs to control the crime of trafficking in persons. Broad-based and multi-pronged strategies are put in place to address this problem in its entirety that involves prevention, strengthening of administrative and law enforcement measures and, rescue and rehabilitation. Towards the preventive front, the issue of poverty, especially among women, is being addressed within the framework of the Tenth five-year development plan (2002-2007). In addition, other sectoral

plans and programs of the government ministries including micro-finance schemes are geared to reducing women's poverty. These efforts are supported by skills promotion programs and vocational training schemes. Particular emphasis is given to enhancing educational opportunities for girls at the formal and informal level such as programs of scholarships, enforcement of compulsory universal primary education. The Government noted that it was also working with civil society organizations, social workers, media persons, and girl students in promoting awareness among people, focusing on trafficking-prone areas.

463. As the Government's legal commitment and institutional arrangements, national laws have been formulated, amended and reformed, action plans devised to effectively deal with the problem. The Trafficking in Persons (Control) Act, 1987, as amended in 2003, which has incorporated harsher penalties to the culprits and elaborated provisions to address new complexities of trafficking, is a comprehensive legal framework that governs investigation, prosecution and punishment of the crimes related to human trafficking. Furthermore, a National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation (NPA) was formulated in 1998. The Ministry of Women, Children and Social Welfare (MWCSW) has outlined 13 priority areas to control trafficking of women and children such as public awareness campaign, non discriminatory laws, cooperation with NGOs and donor agencies, harsh penalties to the traffickers and exploiters or rehabilitation programs for the rescued women and children. In July 2001, a review of the National Program of Action was undertaken and the issue of trafficking of women was included with 8 broad strategic objectives.

464. Concerning the targeted activities, it added that the MWCSW is currently working as the national focal point for implementing the NPA and all other activities geared against the trafficking of women and children. A high level National Coordination Committee to Control Trafficking in Women and Children (NCC) headed by the Minister of MWCSW, is in place and includes representatives from various line ministries and NGOs. Under the NCC, there is a broad-based National Task Force, representing senior officials of the relevant government departments and NGOs and INGOs working in this area, which coordinates activities at the national level and provide guidelines. Moreover, there are District and Village/Municipality level task forces that are implementing preventive and curative activities against trafficking and Women Development Offices are entrusted to work as the Secretariat.

465. The Government indicated that the Nepal Police has created a Women's Cell at its headquarters, which has also launched awareness programs in various districts with regard to trafficking and related exploitation. It has set up 16 Women's Cell in its district level security units and has also implemented a five year long project to train and mobilize the police in awareness raising and prevention of trafficking. There are also several instances of apprehension of the traffickers and victims by the vigilant Nepal Police, often in collaboration and cooperation of civil society actors, before the traffickers sneak the girls from Nepal-India borders. Such girls are then either handed over to their parents or sent to rescue homes for education and income generating training. In addition, the Government of Nepal has established a rescue/emergency fund in certain districts which are considered as major transit points of trafficking victims. The Ministry of Labour also prepared in 1995, and a revised version in 2001, a National Master Plan on Child Labour that includes trafficking in children as an important component of the action programs. Other activities were mentioned such as a "women self-reliance and rehabilitation home" run by the MWCSW since 1998.



466. The Government noted that this issue is complex and involves many different actors and destinations. While poverty, ignorance, lack of education and awareness, urbanization, socio-cultural factors, consumerism, lack of job opportunities, and crisis in traditional forms of livelihood may function as the push factor of trafficking of women and children, it is accompanied by a more complex and vicious network of demand factor within and beyond the border. Therefore, the NPA aims at exerting more coordinated effort towards the prevention and controlling of women and child trafficking and rescue and rehabilitation of the victims. This involves the mobilization of resources at all levels and the participation of not only the government but the civil society as well.

467. Regarding the accuracy of the facts summarized in the communication, it indicated that there are no specific empirical studies carried out by the Government of Nepal to ascertain them. However, the State has incorporated provisions of harsh penalty and imprisonment to the perpetrators of such crime. As per the provisions of the Trafficking in Person (Control) Act, 1987, a convicted criminal of trafficking is liable for a maximum of 20 years of imprisonment and up to Rs. 200,000.00 penalty. The Act also provides for an extra-territorial jurisdiction in such cases allowing indicted persons to be prosecuted in the court of Nepal wherever the crime may have been committed. Any of the police offices in Nepal can accept the complaint of such cases. The principle of strict liability is applied, under which the statement of the victim or the plaintiff is considered as strong evidence against the defendant who has to prove his/her innocence. Cases under this Act are investigated and prosecuted by the Government attorney as a party of the case. There are cases where the judiciary has shown encouraging sensitivity in the interpretation of the laws on trafficking from the victims' perspective.

468. Regarding the question whether complaints had been lodged, the Government indicated that they may be lodged at any police station verbally or in writing. The police then proceed with the investigation of the case and in close coordination with the concerned Office of the District Government Attorney files the case to the court. According to the record available with the Office of the Attorney-General, the following figures on the cases filed by the prosecution officer to the court are reported: from July 2002 to June 2004, 133 cases were filed and 50 adjudicated by the court; and, from July 2003 to June 2004, 173 cases were filed and 88 adjudicated. Concerning investigation, medical examinations, rehabilitation offered to returned women and girls and judicial or other inquiries which may have been carried out, the Government specified that investigation and prosecution of every individual case takes place after the complaint is lodged. This may follow necessary physical examinations as per nature of the case and condition of the victim, which is determined by the investigating officer. The investigating officer, in coordination with the Office of the District Government Attorney, files the case to the competent court for the adjudication of the case. Furthermore, several NGOs in cooperation and coordination with the Government of Nepal have been providing shelter and training for the rehabilitation and provided means of livelihood to such victims in different parts of the country. The existing laws provide the establishment of a rehabilitation fund to run social rehabilitation centers for the victims of trafficking. A committee for the overall coordination of the activities with different stakeholders is also envisioned.

469. The Government further indicated, that as it had already mentioned, the relevant statistics show that perpetrators have been identified and penalized by the decision of the court. In cases where sufficient evidence proves that a person is involved in trafficking in persons, he/she is kept in judicial custody during the prosecution of the case. Even when the court of first instance

acquits an accused, the Office of the Government Attorney files appeal to the higher court for the review of the verdict. Finally, the Government specified that there are instances of compensation to the victims. Half of the penalty amount accrued from the convicted criminal of trafficking is awarded to the victim or her/his minor children, in case the victim has already died.

#### **Allegation letter**

470. On 1 December 2006 the Special Rapporteur has jointly with the Special Representative of the Secretary-General on the situation of human rights defenders sent an allegation letter to the Government concerning M.R.C., a human rights outreach worker and member of the Blue Diamond Society.

471. Members of the Blue Diamond Society were subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on 12 August 2004. The Blue Diamond Society is a NGO working with sexual minorities, lesbian, gay, bisexual and transgender (LGBT) persons on health issues, including outreach education and prevention of HIV/AIDS, and campaigns for non-discrimination against persons based on their sexual orientation in Nepal.

472. According to the information received: On 7 July 2006 evening, M.R.C. and other *metis* working in the Tri Devi Marg area in Thamel were verbally abused by members of the Durbar Marg Police when M.R.C. questioned them as to why photos and videos were being taken of the *metis*. Previously that day, the Durbar Marg Police had arrived in Thamel, and proceeded to record on video a group of *metis*. One of the police officers gave instructions to the cameraman as to the whereabouts of the *metis*. The *metis* attempted to escape and hide their faces from the camera, but were reportedly forced to show their faces. The police threatened to arrest and detain them if they didn't cooperate. Furthermore, it is alleged that the police falsely told the *metis* that they were sent by the Director of Blue Diamond Society in an attempt to film them.

473. Concern was expressed that the above acts of verbal abuse against M.R.C. may be related to her human rights activities, specifically her outreach work with Blue Diamond Society. In addition, concern was expressed that the events represent a sustained campaign by police to harass, intimidate and humiliate *metis* in Nepal, including by sexual violence.

#### **Responses from the Government to communications sent in 2005 and 2004**

474. By letters dated 4 January and 22 March 2006, the Government responded to the urgent appeal sent by the Special Rapporteur on 28 November 2005 concerning G.N. and R.B. and provided information on each alleged victims. The full details of the allegations submitted have been reflected in the Special Rapporteur's previous Report on Communications sent and received (E/CN.4/2006/61/Add.1).

475. In its letter dated 4 January 2006, the Government informed that on 5 September 2005 at Kapilbastu Vikshyuchowk, the police patrolling team caught them red-handed along with the evidence of paper and pamphlets related to terrorist activities. They were held in preventive

detention from 6 September by the order of the Chief District Officer. Challenging the detention, they were able to produce a writ of habeas corpus in the Supreme Court. By order of the Court, they were released on 24 October.

476. On 22 March 2006, the Government stated G.N. was arrested from her home town in Arghakhanchi, on 10 May 2005 under Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) and was transferred to District Jail, Kapilvastu on 12 May 2005. She was released by the order of Appellate Court in Butwal on 5 September 2005 but was on the same day arrested by security personnel from Taulihawa of Kapilvastu district. She was then released by the order of the Supreme Court in Butwal on 24 October 2005. During the custody, the alleged victim was allowed to meet up with her family members and to consult with legal practitioner of her choice. According to the Government, she was treated humanly and no violence was inflicted against her during the custody.

477. R.B. was also arrested in Arghakhanchi on 30 April 2005 under TADO and was transferred to District Jail, Kapilvastu on 4 May 2005. She was released by order of Appellate Court in Butwal on 5 September 2005. On the same day, she was again arrested by security personnel from Taulihawa of Kapilvastu district but was released by the order of the Supreme Court in Butwal on 24 October 2005.

478. In the same letter the Government responded to a communication sent on 17 November 2004 regarding the alleged rape of S.S. from Inruwa, Sunsari. On 17 May 2004, at around 11 p.m., 8 to 10 undermined masked persons took control of the family members of S.S. and forcefully took her to a nearby pond belonging to D. B. S. She was found gang-raped, killed and later thrown into the pond. According to the Government's information, the police immediately arrested some local youths for their suspected involvement in the incident. But they released for not having any connection with the said incident. In fact, as the case was under investigation, the police arrested on 29 November 2004, M.P., M.C., T.N.S.K., K.R.C., D.Y. and R.K.C, permanent residents of Bhawanipur, India and currently residing in Durnaha in Sunsari District. The Government indicated that they were produced before the competent authority for trial. On 28 December 2004, the accused were remanded to pre-trial detention in District Jail Morang by the order of the Sunsari District Court. M.C. and R.K.C. were released by the Court on the condition that they would report to the court on specified date. According to the information provided, the court has also issued warrant order.

479. On 29 November 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture sent an allegation letter concerning the alleged rape of S.M. In its letter dated 22 March 2006, the Government informed that S.M., aged 16, was reportedly raped by security personnel on 10 November 2004. Among the alleged perpetrators, police personnel YPK and army personnel BR and KK are in pre-trial custody in District Jail Morang by the order of District Court Sunsari. One army personnel BA, also an accused of the same incident, is still at large.

480. On 17 November 2004, the Special Rapporteur, jointly with the Special Rapporteur on Racism, Xenophobia and Related Intolerance and the Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography sent an allegation letter concerning S.S., a Dalit girl aged 14, from Inaruwa, Sunsari who was allegedly raped and then murdered with impunity. On 22 March 2006, the Government informed the Special Rapporteurs that the police had at the time

immediately arrested some local youths for their suspected involvement in the incident, who were later found to be not involved and released. On 29 November 2004, the police arrested six men, who were permanent residents of Bhawanipur, India and at the time resided in Dumraha, Sunsari District. They were produced before the competent authority for trial. On 28 December 2004, four of these men were remanded to pre-trial detention in District Jail Morang by order of the Sunsari District Court. Two of the men were later released by the Court.

481. On 7 July and 14 October 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent communications concerning M.S. On 22 March 2006, the Government informed that M.S. was arrested on 17 February 2004. The same day, two captains, acting on orders of a colonel, had used wrong techniques and methods during the interrogations and she died at 11.30 on that day. The General Court Martial found the three officers guilty and sentenced them to six months of imprisonment, forfeiture of promotion and a monetary fine as compensation.

482. On 8 June 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent communications concerning CMM. In its letter dated 22 March 2006, the Government stated that CMM was arrested on 31 May 2004 for general inquiry and released on 7 June 2004. According to the Government, she was allowed to meet her family and consult a legal practitioner of her choice. She was treated humanely and no violence was inflicted during the custody.

483. On 18 March 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Chairperson of the Working Group on Arbitrary Detention sent an urgent appeal concerning NL. By letter 22 March 2006, the Government stated that NL was arrested on 5 March 2004 for general inquiry and released on 3 August 2004. According to the Government, she was allowed to meet her family and consult a legal practitioner of her choice. She was treated humanely and no violence was inflicted during the custody.

484. On 4 March 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Chairperson of the Working Group on Arbitrary Detention, sent an urgent appeal concerning RA. By letter 22 March 2004, the Government stated that RA was arrested on 31 May 2004 for general inquiry and released on 3 August 2004. According to the Government, she was allowed to meet her family and consult a legal practitioner of her choice. She was treated humanely and no violence was inflicted during the custody.

485. Regarding the cases of R.R. and S.C. submitted on 3 March 2004, the Government informed in a letter dated 8 January 2007 to the Special Rapporteur on extrajudicial, summary or arbitrary executions that the General court-martial presided over by Brigadier General Chhatraman Gurung delivered the following sentence to the following officials of the Sher Battalion of Nepal Army, which was upheld by the competent authorities of the Government of Nepal:

(a) Stern reprimand issued against the then Commander of the Battalion, Lt. Col. K.L.;

(b) Declaration of ineligibility to promotion for one year to the Deputy Commander of the Battalion, Major S.S.B.;

(c) Four months of imprisonment and declaration of ineligibility to promotion for three years to the Group Commander, Captain S.B.;

(d) Four months of imprisonment to Sargent Master D.T.M., who has resigned from the service;

(e) Four months of imprisonment to Sargent S.B.R..

486. An order has been issued to locate the whereabouts of absconded Corporal K.B.K. with the view to take stern action against him by the General court-martial

487. Lance Corporals B.B.S. and J.P. as well as soldiers K.T., D.N. and L.P.B. have absconded. It has been decided that the necessary action would be taken against them, following proper investigations, as soon as they are apprehended. The Ministry of Defense has asked the Ministry of Home Affairs to provide compensation to next of kin of R.R. and S.C.

### **Observations**

488. The Special Rapporteur thanks the Government for replying to the allegation letter of 13 April 2006 by letter dated 23 January 2007. In light of the recommendations to Nepal of the previous Special Rapporteur on violence against women, its causes and consequences, which are contained in the report on her mission to Bangladesh, India and Nepal (E/CN.4/2001/73/Add.2), the Special Rapporteur welcomes the various activities of the Government to combat trafficking and provide assistance to the victims and would like to encourage the Government to further improve its efforts to address the issue through a human rights-based approach. The Special Rapporteur also appreciates the responses to communications sent in 2004 and 2005.

489. The Special Rapporteur looks forward to receiving reply to her communications dated 6 February and 1 December 2006 and reiterates her interest in receiving a reply from the Government in regard to the allegations submitted.

## **Pakistan**

### **Allegation Letter**

490. On 3 February 2006 the Special Rapporteur has jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an allegation letter to the Government concerning the murders of S. B., her husband A. N. B., her 5-year old son L. A. and her 3-year-old daughter H.

491. According to information received, S.B. and her two children were shot and killed in their home village of Mohammad Bux Odhu, Taluka Garhi Khero, District Jacobabad, Sindh Province on 4 January 2006. The murders were allegedly committed by S.B.'s two brothers and four accomplices. The alleged perpetrators also shot and severely injured A.N.B. He was taken to Larkana Hospital where the same perpetrators later allegedly attacked A.N.B. again and killed him.

492. Eight years earlier, S.B. had married A.N.B. against her family's will. Subsequently, the married couple fled their hometown of Ratodero, District Larkana to live in Mohammad Bux Odhu. Sources allege that the brothers committed the murders with the intent to restore their family's "honor," which they considered tarnished by S.B.'s decision to exercise her right to choose her husband and marry.

493. Reportedly, neither brother nor any of their accomplices have been arrested and all six men remain at large.

#### **Response from the Government**

494. By letter dated on 13 July 2006, the Government informed the Special Rapporteur that the case concerning the murder of S.B. and her family in Jacobabad was duly registered under Crime No. 01/2006 U/S 302-324 Pakistan Penal Code of police State Muhammad Pur Odho, District Jacobabad. A detailed investigation was reported to be in process. According to the Government, police have conducted many raids to arrest the accused who have absconded.

#### **Allegation letter**

495. On 18 October 2006 the Special Rapporteur has jointly with Special Rapporteur on the question of torture sent an allegation letter to the Government concerning the alleged kidnapping and abuse of G.S. and her mother M. M., and her father M.H., from Chak Sher Khan, Kabirwala Town, all members of the lower Batti caste.

496. According to allegations received on 25 August 2006, G.S. returned to her home village to announce that she graduated first class with a Master of Arts in Education from Zakarya University. The educational success of a lower caste person allegedly aroused the envy of villagers belonging to the Mirali upper class.

497. During the night from 25 to 26 August at approximately 1:00 a.m., a group of about 12 men, including several police officers in uniform, forcibly entered G.S.'s family home. The men beat her father with boots, iron sticks and gun butts. They then kidnapped G.S. and M.M. They dragged them from their home while continuously beating and sexually taunting them. They were subsequently imprisoned in a house in Kabirwala Town, where they both were gang raped over the course of several days. Despite complaints by their relatives, the local police initially refused to register the case and only raided the house on 5 September 2006. In the course of the raid, police officers allegedly arranged for the perpetrators to escape and take their victims with them. However, concerned local citizens managed to free the two women and arrest and hand over to the police three of the suspected perpetrators.

498. Local police officials, whose names are known to the Special Rapporteur, have allegedly pressured the victims not to speak to anyone about the case. The Deputy Superintendent and Sub Inspector, a relative of one of the suspects who was reportedly appointed on short notice as Saddar Station Head Officer, also ordered them to leave the area or face dire consequences. G.S.'s teaching contract at a local school was also abruptly terminated. As of 28 September 2006, no criminal action had been taken against any of the perpetrators.

499. Concern was expressed that the perpetrators or persons affiliated with them may seek to intimidate the victims through violent means.

#### **Response from the Government**

500. On 14 December 2006, the Government replied to the allegation letter regarding G.S. The Government informed the Special Rapporteur that the matter was referred to the District Police Officer for report. He has stated that the case FIR NO 395/06 dated 26.8.2006 u/s PPC, Police Station Saddar Kabirwala, was registered on the report of M.H., complainant to the effect that on the intervening night of 25 to 26 August 2006 accused known suspects of forcibly abducting his daughter and his wife from his house. Motive behind the occurrence was that the brother of the said complainant had allegedly abducted the wife of one of the accused.

501. Initial investigation of the case was conducted by Sub Inspector Falak Sher, Incharge Investigation Cell, Police Station Saddar Kabirwala. Many raids were conducted on the possible hideouts of the accused, but they could not be arrested. The accused, along with their families, left their homes due to fear of arrest. The accused N. is a resident of District Jhang. Raids were also conducted in districts Jhang and Layyah. After strenuous efforts both abductees were recovered on 5 September 2006. He was arrested, and the weapon along with black shirt and pants were recovered from him. In this connection, case FIR No. 428/06 dated 11 September 2006 u/s 13/20/65 AO was registered at the Police Station Saddar Kabirwala and he was sent to the judicial lock-up.

502. G.S. in her statement u/s 164 Cr. P.C recorded by the Illaqa Magistrate did not mention the commission of *zina* (rape). Her application for medical examination was turned down by the Illaqa Magistrate as she refused to get herself medically examined. Subsequently, on 13 September 2006, the compliant party submitted an application with the Illaqa Magistrate for the medical examination of G.S., wherein, the Lady Medical Officer stated that rape had been committed. Therefore, section 10(4)/779 ZO was added. Later on, the accused received interim bails from the court of the learned Additional Session Judge, Kabirwala until 13 October 2006.

503. On 13 October 2006, the pre-arrest bails of the accused were fixed for argument in the court of learned Additional Session Judge, Kabirwala. SHO, Police Station Saddar K. along with the case file presented himself before the court. The counsel for the accused requested the court for the adjournment. On 19 October 2006, the bails of five accused were cancelled. They were arrested and their physical remand was obtained till 24 October 2006. However, the pre-arrest bail of two accused was confirmed by the said court on the statement of the complainant that they had taken Safae from both the said accused and they were innocent. Three of the accused are military personnel. Therefore, the concerned Commanding Officers have been moved to direct the said accused to join the investigation.

504. Regarding complaints contained in the letter of the Asian Human Rights Commission against the police and others, the matter was referred to SP/Investigation, Khanewal to inquire into the matter and submit a factual report. As per his report, he heard both parties and also recorded their statements including those police officers who have been allegedly involved in the matter under reference on the following:

(a) Involvement of the police officials in the abduction and rape of G.S.: during inquiry, neither any police officer/official has been found involved in the abduction and rape nor has any police officer/official been found involved in extending help of any sort to the accused after the recovery of G.S.. During the inquiry, it was also found that all sympathies of police officers/officials including DSP K. were with the complainant side.

(b) Provision of shelter by the DSP, K. to the accused persons: The DSP/S DPO, K. never extended any help of any sort to the accused party. He was found to be supervising the investigation of the case properly with zeal and zest extending all efforts with the complainant party. One of the accused has been arrested and sent to jail, whereas the pre-arrest bails of five accused have been cancelled from the court and the learned ASJ and now they are on physical remand and are being interrogated.

(c) Involvement of local politicians in this case as per police record: No politician of Sub-Division Kabirwala has been found directly or indirectly involved in this case seeking help for accused and opposing the complainant side. However, it has come to light that S.H.J.G., Provincial Minister, is extending moral support to the complainant in this case.

(d) Threats to the victim and her family by the DSP K. and SHO S.K. to leave the town immediately: The alleged allegation has been found absolutely baseless and frivolous. The said officers as well as local police have found extending all out efforts to provide justice to the complainant side.

#### **Observations**

505. The Special Rapporteur would like to thank the Government for its cooperation and reply of 13 July 2006 concerning the murders of S.B. and her family. However, the Special Rapporteur would appreciate receiving additional information as cases against alleged perpetrators are progressing.

### **Philippines**

#### **Letter of allegation**

506. On 17 May 2006 the Special Rapporteur has jointly with the Special Rapporteur on the human rights of migrants sent a letter of allegation regarding the alleged abusive work conditions and ill treatment of L.D.O., a Philippine domestic helper working in Qatar. According to the information received, L.D.O., age 25, went to work as a domestic helper in Qatar in October of 2005. In December 2005, she telephoned her mother to complain that her employer (A.M.A.K.) had beaten her and that, contrary to the contract she had signed, she was forced to work from 7:00 to 10:00. On April 22, 2006, L.D.O. called her mother again to complain that three members of her employer's family (A.A.K., M.A.K. and R.A.K.) had seriously beaten her, resulting in multiple abrasions on her upper body and upper lip, and pain at the back of her body. She was then taken to the airport and forced to board an airplane back to the Philippines. Various items of her property were taken and wages owed for the last two months of her employment remained unpaid. Once in the Philippines, she was admitted to hospital as she complained of headaches and pain all over her body. Complaints have allegedly been lodged with: the Department of Foreign Affairs in Manila, the Philippine National Police in Manila, the Office of the Undersecretary for Migrant Workers Administration in Manila, and the Philippine Overseas



Employment Administration in Manila, as well as with the Office of The Ambassador, Philippine Embassy in Qatar and also the Qatar Embassy in the Philippines. It is unclear if any action has been taken.

#### **Response from the Government**

507. By letter dated 15 June 2006, the Government replied to the communication of 17 May 2006 concerning L.D.O. The Government stated that the Philippine Embassy in Doha, Qatar, could not make a definite determination on the accuracy of the facts and that its knowledge of the case is based on documents submitted by the victim, which include police and medical reports. Embassy officials had no opportunity to interview L.D.O. as the complaint was filed when she was already in Manila. The Embassy has requested the assistance of a local lawyer to handle the filing of a case with the Qatari police. The lawyer has requested for a Special Power of Attorney authorizing her to file both criminal and civil cases. This authorization is yet to be received from the victim. The Government also informed the Special Rapporteur that the Embassy would discuss the case with Qatari authorities, including the office responsible for human rights, to avoid similar cases in the future. The Embassy also recommended that the Special Rapporteur refer the case to the local office in Doha of the Office of the High Commissioner for Human Rights. The Office of the Undersecretary for Migrant Workers Affairs of the Department of Foreign Affairs is closely monitoring the case and is in constant communication with the sister of the victim concerning developments in the case. Finally, the Embassy indicated that it planned to negotiate a Philippines-Qatar labour agreement that would include provisions on the safety and welfare of overseas Filipino workers in Qatar.

#### **Letter of allegation**

508. On 3 July 2006 the Special Rapporteur has jointly with the Special Representative of the Secretary-General on the situation of human rights defenders sent a letter of allegation concerning A.A.-G., a pro-democracy activist and leader of the *Pagkakaisan sa Kababaihan* (Kaisa Ka), an organization that works in defense of women's rights. According to the information received, on 16 May 2006, A.A.-G. was followed by two men on motorcycle.

509. Two days later, on 18 May 2006, A.A.-G. 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. A. Abanador-Gandia suffered eight gun shot wounds to her head and body.

510. Grave concern is expressed that the killing of A. Abanador-Gandia may be connected with her activities in defense of human rights, in particular because of her pro-democracy activism. Particular concern is expressed that the killing of A. Abanador-Gandia forms part of a campaign to silence human rights defenders in the Philippines.

#### **Response from the Government**

511. By a letter dated 8 September 2006, the Government replied to the communication of 3 July 2006. The Government stated that the Directorate for Investigation and Detective Management of the National Police Commission reported that a police investigation resulted from the killing of A.A.-G. In addition, complaints were filed against two suspects before the

Office of the City Prosecutor, Balanga City. Both suspects belong to the National Police Commission. At the time of writing, the case was pending preliminary investigation before the prosecutor's office and the complaint was docketed as IS . No. CP-162-06.

### **Urgent appeal**

512. On 30 November 2006 the Special Rapporteur has jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention sent an urgent appeal concerning W.M., aged 26, detained at Quezon Provincial Jail in Lucena City. According to the information received, W.M. was arrested on 25 November 2005 in Barangay village, Plaridel Ilaya, Plaridel, Quezon, on suspicion of being a member of the New People's Army (NPA). She was detained at various venues since then. She was also pregnant at the time of her arrest. The arrest was carried out by members of the 76th Infantry Battalion of the Philippine Army, (commanded by Lieutenant Juanito Paraso.)

513. The military produced no warrant to W.M. upon arrest. She was held at the military headquarters until 30 November 2005. While in the military's custody, she was intimidated, forcibly interrogated, and denied sleep, food, and medicine. Death threats were uttered against her to make her agree to join the Civilian Auxiliary Force Geographical Unit (CAFGU). The military provided a physician to examine her, who prescribed medicine for her pre-natal care. However, the military interrogators, (led by Lt. Paraso,) allowed her food and medicine only on condition of her cooperation in order to secure a confession and information about her alleged comrades of the NPA.

514. W.M. gave birth at the Southern Luzon Command Hospital (SOLCOM) on 22 December 2005. She did not receive adequate medical attention for her postnatal care. On several occasions a member of the 76th Infantry Battalion (Lt. Paraso) called on her in the hospital, where she remained under arrest. W.M. suffered from bleedings when she was interrogated and intimidated during these visits.

515. On 27 January 2006, the military forcibly removed W.M. from the hospital despite the fact that her health was still precarious. She was taken back to the military camp of the 76th IB in Barangay Villa Principe, Gumaca, Quezon, where the authorities failed to provide her with adequate medical attention and facilities. She was detained at the military camp in an overcrowded cell with little ventilation. She was not permitted to leave her cell or to contact her relatives. More attempts were made to force W.M. to join the CAFGU and become a speaker for the counter-insurgency campaign in village assemblies organized by the military.

516. After more than eight months in detention, W.M. was still not aware of the exact charges against her. W.M. was not provided with access to legal counsel for the first five months of her detention. It was only in the first week of April 2006 that she was finally taken to the Regional Trial Court, Branch 62, in Gumaca, Quezon, for the preliminary trial of her case, at which time she found out that she was being charged with rebellion.

517. On 17 July 2006, the Court ordered the transfer of W.M. from military custody to the Quezon Provincial Jail in Lucena City, where she is presently detained. Her seven-month-old son is living in Lucena City under the care of her aunt. W.M.'s health condition has been negatively affected by a lack of nutrition and adequate medical care.

518. W.M. has been suffering from intermittent cold and fever. Her health condition has been affected by a lack of nutrition and medical facilities.”

519. Concern is expressed as regards the health and physical integrity of W.M. caused by alleged ill-treatment, malnutrition and lack of medical care both before and after the birth of her child.

#### **Response from the government**

520. By letter dated on 12 February 2007, the Government informed that W.M. a.k.a was arrested on 28 November 2005 at around 4 p.m. at Ilaya, Plaridel, Quezon.

521. She was arrested by the joint elements of the 76th Infantry Battalion (IB), 2nd Infantry Division (ID), Philippines Army (PA) in Gumaca, Quezon under Lt. Juanito Parazo and the 417th police Provincial Group (PPMG) – Quezon led by SPOI Zaldy Bayan.

522. The arrest was carried out by the joint elements of the 76th IB, 2nd ID, PA and 417th PPMG\_Quizon by virtue of the following arrest orders:

523. Order of Arrest dated 27 February 2003 issued by Judge Mariano A. Morales of Regional Trial court (RTC) Branch, Calauag, Quezon for the crime of Rebellion that transpired in Lopez, Quezon and docketed under Criminal Case No. 4067-C.

524. Order of Arrest dated 02 September 2004 issued by Judge Aurora V. Maqueda – Roman of regional Trial court (RTC) Branch 61, Gumaca, Quezon for the crime of rebellion that transpired in Antimonan, Quezon docketed under Criminal Case No. 7897-G.

525. It is the standing operating procedure of the arresting authorities to inform the person to be arrested of his/her rights and the reason why he/she is being arrested. The fact that W.M. was arrested by virtue of the two arrest orders, it follows that the arresting authorities have informed W.M. of the charges against her.

526. No complaint has been lodged by or on behalf of the victim. However, the counts of rebellion charges has been filed against W.M. docketed under Criminal case No. 4067-C at the RTC Branch 63, Calauag, Quezon and docketed under criminal Case No 7897-G at the RTC Branch 61, Gumaca, Quezon.

527. Following are the reports by the Philippines National Police and courts records relative to the case of W.M.: W.M. was arrested at the house of her relative on 28 November 2005 at around 4 p.m. at Ilaya, Plaridel, Quezon by joint elements of the 76th IB, 2nd ID, PA and Lt. Juanito Parazo and the 417th PPMG-Quezon led by SPOI Zaldy Bayan.

528. The arrest was made by virtue of (1) Order of arrest dated 27 February 2003 issued by Judge Mariano A. Morales of RTC Branch 63, Calauag, Quezon for the crime of Rebellion that transpired in Lopez, Quezon and docketed under Criminal Case No. 4067\_c, and (2) Order of Arrest dated 02 September 2004 issued by Judge aurora V. Maqueda-Roman of RTC, Branch 61,

Gumaca, Quezon for the crime of rebellion that transpired in Atimonon Quezon docketed under criminal Case No. 7897-G.

529. On 30 November 2005, W.M. was formally turned over to courts concerned and was committed to the Lopez Municipal Police Station for detention. On that same day, the RTC Branch 61 Gumaca and RTC Branch 63 Calauag, ordered the transfer of W.M. to the Quezon Provincial Jail in Lucena City.

530. On 11 April 2006, RTC Branch 61 Gumaca granted the motion of the 76th IB of the Philippines Army and ordered that the accused be in the custody of the 76th IB of the Philippine Army.

531. On 20 June 2006, the counsel for the accused filed a motion for the transfer of custody detention from the 76th IB PA to the Quezon Provincial Jail in Lucena City before RTC Branch 61 Gumaca, Quezon. On 22 June 2006, said court granted council's motion and ordered the transfer. The court also ordered the Department of social Welfare and Development – Lucena City to take the temporary custody of the 6 month-old child of the accused until such time latter or her family can take care of the child.

532. On 26 September 2006, RTC Branch 206 Municipal City granted the motion of the Quezon Provincial Jail and ordered the transfer of the accused to the Municipal City Jail considering the amount of expenses and security risks involved in transporting the accused from Lucena to Muntinlupa City for the purpose of attending the trial of this case.

533. Furthermore, attached are copies of medical certificate and medical record from the Camp Nakar Station Hospital stating that the accused delivered a baby boy in said hospital and was confined and treated from 1 December 2005 to 10 January 2006.

534. No prosecution has been undertaken and no penal, disciplinary or administrative sanctions have been imposed on the alleged perpetrators. However, criminal case for rebellion against the accused is pending before the RTC Branch 2006 Municipal City.

535. No compensation has been provided to the victim or the family of the victim.

536. The Government provided attached a medical certificate stating that M.W., 26 years old, was treated at the Camp Nakar Station Hospital from 1 December 2005 to 10 January 2006 with a diagnosis of G2P2 (20029 Pu, 39517 A OG, Cephalic delivered a baby boy AS-9.9 W-3.8 kg.

#### **Response from the Government to an allegation letter sent in 2005**

537. On 3 May 2005, the Special Rapporteur jointly with the Rapporteur on the question of torture sent a letter of allegation concerning ABI, aged 60, Anastacia Mission Village in Brgy, Lumbayao, Aloran, Misamis Occidental. According to the allegations received, on 8 March 2005 at 2 pm, she was arrested at her house by 10 masked and armed men, wearing fatigue shorts, who identified themselves as members of the Criminal Investigation and Detention Group. No reasons were given for her arrest. She was blindfolded and handcuffed and taken in a panel truck in the direction of Ozamis City. Three hours later she was brought to the headquarters of the 1st Infantry "Tabak" Division, Philippine Armed Forces, Pulacan, Labangan, Zamboanga del Sur.

For the first four days in custody, she was held in solitary confinement, left in a room, hog-tied and blindfolded. On the fifth day, she was taken to the Southern Command Headquarters, Zamboanga City. There she was tortured to force her to confess her involvement with the communist movement and to an ambush of personnel of the 10th Infantry Battalion in Sapang Dalaga, Misamis Occidental. She was slapped and punched on the waist every time she refused to reply, stripped naked, sexually assaulted, insulted, hogtied, blindfolded, and was left naked in a cold room. On 15 March 2005, she was presented to the media. She was later taken back to her detention cell and blindfolded. She was denied visitors. On 17 March 2005, the Southern Command announced that she had been transferred to Molave, Zamboanga del Sur, though she was not taken to Pagadian City Jail until 21 March. She was charged with rebellion and was not granted bail by the Regional Trial Court (RTC) Branch 23, Molave, Zamboanga del Sur. Although she was arrested on 8 March her arrest warrant was issued only on 17 March.

538. By letter dated 31 October 2006, the Government informed that according to the Criminal Investigation and Detection Group (CIDG), on 6 March 2006, ABI, together with at least twenty persons, rented the Anastacia Mission Village Function Hall located at Barangay Lumbayao, Aloran, Misamis Occidental. The group of ABI introduced themselves to the employees of the Anastacia Mission Village as "herbalist" who were conducting a seminar on herbal medicine. On 8 March 2005, while the group was about to leave the village compound, a panel truck loaded with at least fifteen armed men forcibly entered the compound and told the group "*wag kayong matakot, mga pulis kami, ito lang ang kailangan namin*". Then the armed men took ABI and hurriedly left the place. When interviewed to determine the involvement of any police personnel in this case, the Police Supt., the then Police Officer of the Criminal Investigation and Detection Team (CIDT) of Misamis Occidental, vehemently denied involvement of any CIDT-CIDG personnel under his command in the alleged illegal arrest, maltreatment, torture and sexual abuse of ABI. Further investigation is being undertaken by CIDG to identify the suspects. By letter dated 27 November 06, the Government informed that ABI is among the co-accused in Criminal Case No. 92-10-292 for rebellion, which is pending before Regional Trial Court Branch 23, Molave, Zamboanga del sur.

### **Observations**

539. The Special Rapporteur thanks the Government for its responses. She would like to thank the Government for its reply to the allegation submitted on 30 November 2006 as well as for the allegation letter sent 3 May 2005.

## **Qatar**

### **Allegation letter**

540. On 17 May 2006 the Special Rapporteur has jointly with Special Rapporteur on the human rights of migrants sent an allegation letter to the Government regarding the alleged abusive work conditions and ill treatment of L.D.O., a Philippine domestic helper working in Qatar.

541. According to the information received, L.D.O., a 25 year old Philippine national, went to work as a domestic helper in Qatar in October of 2005. In December of 2005, she telephoned her mother to complain that her employer, A.M.A.K., had beaten her and that, contrary to the contract she had signed; she was being forced to work from 7 am to 10 pm.

542. On April 22, 2006, L.D.O. called her mother again to complain that three members of her employer's family, A.A.K., M.A.K. and R.A.K. had seriously beaten her, resulting in multiple abrasions on her upper body and upper extremities, her upper lip and pain at the back of her body. She was then taken to the airport and forced to board an airplane back to the Philippines. Various items of her property were taken and wages owed for the last two months of her employment remained unpaid.

543. Once in the Philippines, she was admitted to hospital as she complained of headaches and pain all over her body.

544. Complaints have allegedly been lodged with: the Department of Foreign Affairs in Manila, the Philippine National Police in Manila, the Office of the Undersecretary for Migrant Workers Administration in Manila, and the Philippine Overseas Employment Administration POEA in Manila; as well as with the Office of The Ambassador, Philippine Embassy in Qatar and also the Ambassador Qatar Embassy in the Philippines. It is unclear if any action has been taken.

545. The Special Rapporteur appeal to the Government to take all necessary measures to guarantee to the above-mentioned person the right to be free from any gender-based violence, discrimination and abuse.

#### **Response from the Government**

546. By letter dated on 12 July 2006, the Government responded that no complaint or communication had been submitted to the competent authorities before this woman left the country. Thus, no judicial or other kind of investigation was conducted into the allegations in question.

547. The Government informed the Special Rapporteur that, as soon as the competent authorities were informed about her letter, the Department of Public Prosecutions filed a criminal complaint with the Department of Security in the capital, which was registered under the number 2221/2006 and promised to inform her promptly of any new developments.

548. The Constitution of Qatar, which was adopted by a popular referendum held in 2003 and ratified by His Royal Highness the beloved Emir of the country in 2004, entering into force in June of that year, devotes its third chapter (arts. 34-58) to the protection of fundamental rights and freedoms. The Constitution espouses the principle of the indivisibility and interdependence of human rights, thus guaranteeing economic, social, cultural, civil and political rights. Among the rights which the Constitution guarantees, the Government mentions, by way of a non-exhaustive example, equality before the law, non-discrimination, personal freedom and the prohibition of torture.

549. The rights enshrined in the Constitution have been strengthened and promoted through the adoption of a series of statutes and laws and through safeguards established to ensure the independence of the judiciary in its capacity as one of the main mechanisms for protecting human rights. The constitutional and legal systems have been further strengthened by the creation of institutions for the promotion and protection of human rights both at the governmental level (for example, the Human Rights Office of the Ministry of Foreign Affairs and the Department of Human Rights at the Ministry of the Interior), and at the civil level (for

example, the National Committee for Human Rights and the Qatari Foundation for the Protection of Women and Children).

### **Urgent appeal**

550. By letter dated on 5 December 2006, the Special Rapporteur has jointly with Chairperson-Rapporteur of the Working Group on Arbitrary Detention sent an urgent appeal to the Government to bring its attention to the information regarding three Sudanese citizens currently held at the women's detention quarters of the Follow-Up and Search Department (i.e. the deportation holding facility), M.A.I., and her two daughters F.I.M.A. and H.I.M.A. F.I.M.A., who has been a resident of Qatar for 22 years, is married to K.T.F.A., a Qatari national who is the father of her two children, A. born in 2003 and M. born 2005.

551. According to information received from the Special Rapporteur on trafficking in persons, especially women and children, who visited the female section of the Follow-Up and Search Department on 12 November 2006: On 28 or 29 September 2006, M.I.M.A. (age and current location unknown), son of M. and brother of F. and H., was involved in a brawl with a plain cloth policeman who did not identify himself as police officer. During that incident M. herself was hit by the policeman. On 29 September 2006, before M. and F. could lodge a complaint to the police, as they intended to, about 6 police vehicles with more than 20 officers came to their house. M. and F. were interrogated and their statement written down. However, they were not allowed to control the accuracy of the transcript of their statements. On the same day, 29 September 2006, they were arrested and transferred to the Follow-Up and Search Department.

552. The three women have neither been informed of any criminal charges against them, nor been given a written decision on their deportation, nor been informed of the reasons for their detention or of any remedy against their detention or deportation.

553. K.T.F.A. has not visited his wife at the Follow-Up and Search Department or otherwise communicated with her, nor has she been able to see her children. Persons held at the detention quarters of the Follow-Up and Search Department have access to a telephone, but they can use the phone only to make international calls, not local ones.

554. Without in any way making any determination on the facts and circumstances of this case and on whether the detention of M.A.I., and her two daughters F.I.M.A. and H.I.M.A., 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.

### **Response from the Government**

555. By letter dated on 9 February 2007 the Government responded to this urgent appeal. At the time of the finalization of this report the response had not been translated from Arabic and will be reflected in the next report.

### **Observations**

556. Special Rapporteur thanks the Government for the reply on her communication sent on 17 May 2006 and looks forward to receiving information on the outcome of the criminal investigations launched in the case of L.D.O. The Special Rapporteur wishes to thank to the Government for the reply to the allegations submitted on 5 December 2006.

## **République Démocratique du Congo**

### **Lettre d'allégations**

557. Le 17 février 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la torture, a envoyé une lettre d'allégations au Gouvernement concernant cinq citoyens : K.S., 40 ans, employé comme surveillant à la société Bralimaz à Goma, originaire du Sud-Kivu, territoire de Kabare, collectivité Chiringa, M. M.M.E., 17 ans, célibataire, aide-maçon à la société Bralima, originaire de la province du Nord-Kivu, territoire de Lubero, village de Kasee et trois femmes, membres de la famille de M.E., actuellement détenus à la prison centrale de Munzerze. Les allégations sont les suivantes :

558. Le 6 novembre 2005, une somme importante d'argent aurait été volée à la société Bralima, à Goma. Le 7 novembre une enquête aurait été entreprise par différents services de l'État, notamment la Police nationale congolaise, la Direction générale de la Sécurité et une Commission d'enquête composée de quelques agents de la société Bralima. Quelques jours plus tard, six personnes (quatre femmes, et deux hommes, K.S. et M.E.) auraient été arrêtés par les agents de la Direction générale de la sécurité.

559. Les gardiens du lieu de détention des services du renseignement auraient torturé M.E. et les quatre femmes sur ordre de (M. Pilipili) l'Officier de la Police judiciaire et responsable de la Direction générale de la Sécurité. Chaque matin et soir, chacune des victimes aurait reçu 20 coups de bâton. Le 19 novembre 2005, ils auraient été amenés à la résidence du Commandant de la 8ème Région militaire, (Gabriel Amisi Targo Fort), où M.E. aurait été amené à l'arrière du bâtiment par des militaires qui lui auraient demandé de faire un testament verbal car il devait mourir. Deux balles auraient été tirées, l'une à côté de la tête et l'autre entre les jambes de M.E. pour l'intimider. Toutes les femmes auraient été dévêtues par les militaires avant d'être torturées.

560. Le 18 novembre 2005, le chef de la sécurité de la Bralima aurait appelé K.S. et l'aurait enfermé dans un coffre dans les locaux de la société Bralima. Par la suite, des militaires seraient arrivés pour l'emmener au cachot de la Direction générale du renseignement. Le 19 novembre 2005 vers 10 heures, K.S. aurait été amené à la résidence du Commandant de la 8ème Région militaire à bord d'une camionnette appelé en terme militaire « Convoy ». Arrivé devant le commandant de la 8ème Région militaire, celui-ci lui aurait demandé où se trouvait l'argent volé. Il lui aurait déclaré que, s'il ne rendait pas cet argent, il serait exécuté. Devant le Commandant de la 8ème Région, l'Officier de la Police judiciaire et responsable de la Direction générale du renseignement, K.S. aurait été torturé avec des morceaux de bois.

561. Vers 23 heures des militaires masqués seraient venus et auraient placé les victimes, les yeux bandés, sous des sièges d'un minibus, pour être conduits vers un lieu inconnu. Arrivés à destination après une longue distance, les militaires les auraient menacés de nouveau en pointant



un revolver sur la tête et une baïonnette sur le ventre en demandant à chacun de prononcer ses dernières paroles avant de mourir. Par la suite, les victimes auraient été emmenées au cachot de T2. De nombreuses blessures auraient été infligées dans le bas du dos.

562. Finalement, les victimes auraient été conduites au cachot de la Direction générale du renseignement, où l'un des responsables des services du renseignement aurait refusé de les maintenir en détention après avoir constaté qu'elles avaient été sérieusement torturées par les militaires sous les ordres du Général (Amsi Targo Fort).

### **Lettre d'allégations**

563. Par une lettre en date du 6 avril 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants, a envoyé une lettre d'allégations au Gouvernement concernant le viol de L.S.K., 13 ans, et de C.L.N., 17 ans.

564. D'après les informations reçues, le 15 janvier 2006 aux environs de 19 heures, de retour de chez le tailleur de la Commune de Makala, L.S.K. aurait été abordée par un jeune homme d'une vingtaine d'années qui avait déjà tenté de l'approcher sur le chemin de l'école. Ils auraient été rejoints par six amis du jeune homme. Après avoir bâillonné la jeune fille avec un foulard pour l'empêcher de crier, les sept hommes auraient violé la jeune fille, et ce, de 19 heures à 5 heures du matin. Ce n'est que le lendemain qu'elle aurait été retrouvée par des passants, baignant dans son sang.

565. Après avoir retrouvé leur fille, les parents de L.S.K. auraient alerté les officiers de police judiciaire du rond point de Ngaba du district de Mont Amba. D'après les informations reçues, les officiers de police connaîtraient l'identité des auteurs du viol mais auraient indiqué aux parents de la jeune fille ne pas disposer des moyens nécessaires pour mener des actions à l'encontre des auteurs de ces viols. Actuellement soignée dans un centre de santé, L.S.K. souffrirait de dommages physiques et psychologiques graves, ne pourrait plus marcher correctement et risquerait, selon les médecins, de ne plus pouvoir avoir d'enfants.

566. Les Rapporteurs spéciaux ont également été informés du fait que le 18 février 2006, C.L.N. aurait également été victime d'un viol collectif. Aux environs de 20 heures dans la Commune de Kalamu, elle aurait été abordée par cinq hommes, alors qu'elle se rendait à une veillée de prière avec une amie. Alors qu'elle tentait de se défaire de l'emprise des hommes, celui qui semblerait être le chef du groupe, aurait ordonné à l'un de ses complices de la brûler avec une cigarette pendant que trois hommes du groupe emmenaient son amie. Malgré leurs appels au secours, personne ne serait venu en aide aux jeunes filles. Alors que deux des membres du groupe traînaient à terre C.L.N., deux policiers en civil habitant le quartier auraient interpellé les deux hommes mais les auraient finalement laissés poursuivre leur méfait. Conduite de force dans une chambrette derrière un débit de boisson, la jeune fille aurait été immobilisée et violée par les deux hommes, au moyen d'une bouteille de soda. Par la suite, pendant que les deux hommes se disputaient, la jeune fille aurait réussi à s'enfuir et à obtenir le secours d'un passant pour rejoindre son domicile.

567. Le chef du groupe aurait été appréhendé deux jours après les faits par la police suite à la plainte déposée par la victime à l'État major du District de la Funa. Pendant son interrogatoire,

l'officier de police judiciaire instructeur se serait rendu compte qu'il s'agissait d'une bande organisée commettant régulièrement de telles actions. Le chef du group l'aurait été transféré à l'Inspection provinciale puis au Centre pénitentiaire et de rééducation de Kinshasa et l'instruction poursuivie afin de démanteler le réseau. La jeune fille, manifestant des tendances suicidaires, serait soignée dans un centre de santé et suivie par un psychologue. Aucune information ne permettrait à ce jour de savoir ce qu'il est advenu de la jeune fille enlevée.

### **App el urgent**

568. Le 2 mai 2006, le Rapporteur spécial, conjointement avec le Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire et le Rapporteur spécial sur la torture, a envoyé un appel urgent au Gouvernement concernant le sujet des activistes à Kinshasa.

569. M.K.M., activiste de la société civile et fondateur de l'association mutuelle « Communauté des intellectuels de Bandundu à Kinshasa », de son épouse J.K.B., ainsi que de J.H.M., L.K.M., I.K., G.K.K., J.K.B., N.D., R.Z., et V.E.D.

570. Selon les informations reçues : Le 28 août 2004, vers 7 heures du matin, M.K.M. serait rentré dans sa résidence du quartier Lukunga de la Commune de Ngaliema à Kinshasa et aurait trouvé la maison saccagée, et désertée par les membres de sa famille, tous les effets emportés. S'informant auprès de ses voisins, il aurait appris qu'il s'agissait d'une opération de l'armée et que les assaillants auraient enlevé son épouse, ses neveux et beaux-frères après les avoir frappés et brutalisés, pour les conduire ensuite vers une destination inconnue. Parti à la recherche des membres de sa famille, il aurait à son tour été enlevé à Kinshasa par les agents de l'État major de renseignements militaires (ex-DEMIAP) sur la route de Ndolo vers 10 heures du matin. Il aurait été acheminé au cachot de ces mêmes services dans la Commune de Kintambo où il aurait aperçu son épouse et les autres membres de sa famille.

571. M.K.M. aurait alors passé deux mois dans une cellule sans contact avec l'extérieur, les membres de sa famille ou un avocat. Pendant cinq jours et cinq nuits, il aurait été soumis à des interrogatoires brutaux, accompagnés de menaces de mort et autres traitements inhumains et dégradants.

572. Après deux mois de détention dans le cachot de Services de renseignements militaires, il aurait été transféré au Centre pénitentiaire et de rééducation de Kinshasa (CPRK) où les conditions de détention étaient identiques. Il serait toujours détenu en « garde à vue » car il n'aurait jamais été présenté devant le juge compétent. Il n'aurait jamais été inculpé ou informé des motifs de sa détention, tout comme J.H.M., L.K.M., I.K., K.K., J.K.B., N.D., R.Z. et V.E.D.

573. Selon les mêmes informations, son épouse, J.K.B. aurait été arrêtée et détenue le 28 août 2004 vers une heure du matin. Elle aurait été retirée de son lit après que les hommes en tenues militaires et armés eurent cassé la porte de la maison. Elle aurait été frappée avec la crosse d'une arme au ventre et à la figure, et acheminée au cachot de l'État Major des renseignements militaires (ex-DEMIAP) à Kintambo où elle aurait passé deux jours sans qu'elle soit informée du motif de son arrestation et de son incarcération. Lorsqu'elle fut relâchée, sa santé se serait fortement détériorée à la suite des mauvais traitements qui lui auraient été infligés et elle aurait par conséquent été admise dans un centre de santé pendant un mois et demi. Suite aux violences

subies, elle aurait par ailleurs dû avorter. Elle continuerait à souffrir et serait toujours harcelée par des militaires en tenue civile qui rôderaient quotidiennement autour de sa résidence.

### **Appel urgent**

574. Le 27 octobre 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur l'indépendance des juges et des avocats, a envoyé un appel urgent concernant l'extraction forcée de la prison de Beni de M. A.M., chef d'agence de la Banque Commerciale du Congo, poursuivi pour viol.

Selon les informations reçues :

575. Quand le 9 octobre 2006 A.M. aurait été arrêté par le Procureur de la République pour des accusations de viol sur une mineure de 14 ans, des interventions et des menaces auraient été formulées à l'encontre du Procureur de la République pour le pousser à revenir sur sa décision. Il n'aurait toutefois pas cédé face à ces actes d'intimidation, et aurait confirmé sa décision de maintenir A.M. détenu à la prison de Beni. Au cinquième jour de sa détention par le parquet, le Procureur aurait demandé que le conseil de chambre se réunisse, le samedi 14 octobre 2006, pour décider de la prolongation de la mise en détention provisoire. C'est alors que le Président du tribunal de paix (siégeant en l'absence d'un tribunal de grande instance à Beni) aurait décidé d'émettre un avis favorable à la demande de mise en liberté provisoire présentée en faveur du mis en cause en échange d'une caution de 2 500 dollars américains. Le Procureur ayant considéré cette décision abusive, il aurait introduit un appel qui serait suspensif de la décision du Président du tribunal de paix.

576. Le même jour, les proches du mis en cause auraient alors eu recours au Maire adjoint de la ville de Beni, J.M., pour faire libérer l'intéressé. Le samedi 14 octobre 2006 vers 17 heures 30, le Maire adjoint, le Chef de poste principal de l'ANR, (le Lieutenant-Colonel J.T.), commandant de la 89ème brigade, et d'autres membres du Comité Urbain de Sécurité de la ville de Beni seraient arrivés à la prison de Beni et auraient extrait de force A.M. et l'aurait remis en liberté, en flagrante violation de la décision de justice applicable. Le Maire adjoint aurait justifié son acte en indiquant que le comité de sécurité de la ville de Beni aurait tenu une réunion extraordinaire le même jour pour des raisons d'ordre public. Les amis, sympathisants de parti politique et originaires de la même province (Kasai Occidental) du mis en cause auraient proféré des menaces de troubler l'ordre public en manifestant jusqu'à la prison pour sortir l'intéressé. Pour éviter des troubles de l'ordre public, il aurait donc décidé d'aller libérer A.M.

### **Observations**

577. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à ses communications.

## **Russian Federation**

### **Allegation letter**

578. On 13 September 2006, the Special Rapporteur has jointly with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture sent an allegation letter to the Government concerning M.S., aged 23, from Argun in Chechnya. According to the allegations received, on 19 March 2006, she was detained by local law

enforcement officers, following allegations by her husband that she had committed adultery with a serviceman of Christian faith.

579. M.S. was taken to a law enforcement compound in Argun where she was allegedly beaten, while being told "Turn around and be condemned by Allah". Her eyebrows and head were shaved and her scalp was painted green, the colour associated with Islam. A cross was also smeared on her brow. She was ordered to strip, and beaten with wooden rods and hoses on her buttocks, arms, legs, hands, stomach and back. She was forced to confess to being unfaithful, and then taken to her husband's home and made to dance before her neighbours while they verbally insulted her. Several of the law enforcement officials kicked her. On 21 March 2006, she suffered a miscarriage. The local authorities initially failed to investigate the events, despite the fact that they had been recorded on mobile phone videos, and widely circulated in the region. On 29 August 2006, the Chechen Premier, Ramzan A. Kadyrov, reportedly stated that he had order the Chechen Interior Ministry to investigate the events.

#### **Response from the Government**

580. By letter dated 28 December 2006, the Government informed the Special Rapporteur that on 18 March 2006, when M.S. underwent a medical examination at the central district hospital in Shali, scars on her face, hands and back and a concussion were detected. On the same day, the police received reports that she had been abducted. Consequently, the Prosecutor of Argun investigated the case. During the course of this investigation M.S. explained that she had not been abducted, that she had not been subjected to any physical or moral pressure and that she had sustained the injuries as a result of family-internal unhealthy relations. She never complained about her injuries to the police. Therefore, on 7 May 2006 the Prosecutor of Argun refused to open a criminal case for reason of the "absence of a crime" (art. 24, para 1 (1) of the Criminal Procedure Code). However, given the numerous contradictions in testimonies of the persons involved and of eye-witnesses and allegations of wrong-doing by police officers, the case has been referred to the Republican Prosecutor, following which, on 16 October 2006, on the basis of the statement of M.S. a criminal case was opened with reference to art. 117, para. e (2) of the Criminal Code of the Russian Federation (harassment by a group of persons).

#### **Observations**

581. The Special Rapporteur would like to thank the Government for the response to the allegation letter sent 13 September 2006. The Special Rapporteur would like to express her interest in receiving any further information regarding the allegations submitted.

582. The Special Rapporteur also recalls the report on her mission to the Russian Federation (E/CN.4/2006/61/Add.2), in which she made reference to testimonies from relatives of women who had disappeared and had been victims of extrajudicial execution, torture, rape and ill-treatment allegedly by members of the security forces and provided a number of recommendations on how to better protect the human rights and physical integrity of women in the North Caucasus.

## Saudi Arabia

### Allegation letter

583. On 10 November 2006 the Special Rapporteur has jointly with 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, sent an allegation letter to the Government concerning W.A.H., a member of the group Human Rights First in Saudi Arabia.

584. According to information received, Officers of the Mabahith security force detained W.A.H. in Khobar on 20 September 2006. They interrogated her for six hours about a women's rights protest she was organizing. During the interrogation, the Mabahith officers demanded that W.A.H. provide written answers to prepared questions concerning her internet writings and human rights activities. They then demanded that she sign a pledge not to engage in any future human rights activities, including writing articles, organizing protests and speaking to journalists or foreign organizations. They did not provide her with a copy of the signed pledge. Officers also threatened that she would lose her job with Saudi Aramco, the national oil company, if she were to break the pledge made.

585. Following her release, she tried to return to Bahrain where she resides. Reportedly, border officials told her that her name appeared on a list of persons banned from travel, and that she was not allowed to leave Saudi Arabia. Only on 28 September 2006, officials lifted the ban and allowed her to return to Bahrain.

586. Reportedly, W.A.H. has been arrested before due to her advocacy for women's rights. In an urgent appeal dated 11 August 2006, 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 already brought to the Government's attention information that she had been arrested on 4 August 2006, while walking on the bridge connecting Saudi Arabia with Bahrain holding a banner that stated "Give women their rights".

### Urgent appeal

587. On 8 December 2006 the Special Rapporteur has jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention sent an urgent appeal to the Government regarding F.a-T., aged 34, and her children, N. and S.

588. According to information received: F. a.-T. and M.a.-T. had been married for over three years when two of F.a.-T.'s half-brothers demanded that they get a divorce on the grounds of "tribal incompatibility" and took the case to court. They claimed that M.a.-T. did not tell the truth about his tribal background in order to enhance his social status, a claim that he denies. These incidents developed soon after the death of F.a.-T.'s father, who had approved her marriage. In July 2005, Judge Ibrahim Al-Farj divorced the couple against the will of both husband and wife. F.a-T.'s lawyer has lodged an appeal against the decision, which is still pending.

589. In July 2006, the pair was arrested in Jeddah by police agents for living together as an unmarried couple. M.a-T. was eventually released. According to the latest information received,

F.a-T. remains imprisoned in Dammam together with her two children. The authorities informed her that she may only leave prison, if she agrees to return to her estranged blood-family. She refuses to agree to this demand and requests to be reunited with M.a.-T.

590. A committee of the Ministry of Justice reportedly questioned Judge Al-Farrj. The results of this inquiry are unknown.

#### **Response from the Government**

591. By letter dated on 29 January 2007, the competent authorities in the Kingdom of Saudi Arabia responded to the urgent appeal and indicated that this matter, involving family social disputes, has been referred to the court at the request of the persons concerned.

#### **Observations**

592. The Special Rapporteur regrets not having received a reply to her communications of 10 November 2006. She would like to reiterate her interest in receiving a reply from the Government in regard to the allegations submitted.

593. The Special Rapporteur thanks for the reply on her communication sent on 8 December 2006 and looks forward to receiving information on the outcome of the investigations.

### **Sierra Leone**

#### **Allegation letter**

594. By letter dated on 25 August 2006 the Special Rapporteur has jointly with the Special Rapporteur on the independence of judges and lawyers sent an allegation letter to the Government concerning usurpation of judiciary power by local chiefs resulting in violence and discrimination against women.

595. According to information received, customary law forms part of the Common Law in all parts of the country, except for the capital Freetown, and is relevant to 85 per cent of the population. Under the Courts Act of 1963, the Local Courts are the only institution competent to adjudicate customary law. Furthermore, the Statute foresees that the presiding judge of a Local Court is appointed by the local paramount chief with the approval of the Ministry of Local Government and Community Development. The Local Courts' rulings are supposed to be monitored by officers of the Ministry of Justice and maybe overturned by these officers.

596. In practice, however, most customary law cases are dealt outside the Local Court system and decided by local chiefs. The practice is allegedly widely tolerated by officials of the Justice Ministry. Sources allege that some of the chiefs, who usurp judiciary powers, routinely issue rulings that violate the human rights of women and basic precepts of gender equality. In some criminal cases referred to them by community members, chiefs have reportedly carried out functions as both prosecutor and judge. Examples include chiefs who have levied arbitrary charges against women such as "witchcraft" (a charge that does not exist in Sierna Leonean Law) Reportedly, there have also been cases, where chiefs have determined guilt without evidence, imposed arbitrary and exorbitant fines, imprisoned women unlawfully in their homes or in illegal

“tribal prisons” or threatened to, or actually carried out, expulsions of women from the community as a form of punishment.

597. Moreover, chiefs also routinely fail to bring to the attention of the competent state authorities cases of rape, which members of local communities often first refer to the chiefs. Moreover, many chiefs also condone violence against women committed by the husband. The customary law, as applied in the Local Courts, furthers these attitudes since it also condones domestic violence below a certain intensity threshold, regarding it as a justified “chastisement” of the wife.

### **Observations**

598. The Special Rapporteur regrets not having received a reply from the Government to her communication dated 25 August 2006.

599. The Special Rapporteur would like to recall the report of the previous Special Rapporteur on violence against women, its causes and consequences, on her mission to Sierra Leone (E/CN.4/2002/83/Add.2). The Special Rapporteur encouraged the Government to review the formal and customary judicial systems to ensure that gender discriminatory provisions are removed and that adequate protection is provided, in line with the Convention on the Elimination of All Forms of Violence against Women. Inheritance rights and legislation preventing domestic violence are specific concerns. The allegations transmitted would indicate that this recommendation has yet to be implemented.

600. The Special Rapporteur would like to reiterate her interest in receiving a reply from the Government in regard to the allegation submitted to the Government.

## **Singapore**

### **Allegation Letter**

601. On 16 February 2006 the Special Rapporteur has jointly with the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children sent an allegation letter to the Government concerning allegations about norms and procedures that discriminate against women domestic migrant workers and make them more vulnerable to exploitation, abuse and restrictions of their physical freedom.

602. According to information received, there are 150,000 women domestic migrant workers in Singapore who are in the majority from Indonesia, the Philippines and Sri Lanka. Private employment agencies typically recruit the women in their countries of origin and place them with Singaporean employers. These agencies usually charge significant recruitment, transfer and placement fees (S\$1,400-2,100), which the women often have to repay by working the initial 4 to 10 months of their contract without pay. Additional fees are often charged and have to be worked off, if a domestic worker decides to change employers during her stay. Some employment agents, especially unlicensed ones, have threatened workers with severe reprisals, including trafficking into prostitution, if they try to leave their job and return home before they have worked off their debt. Other agents have also intimidated workers by way of physical abuse.

603. Once in Singapore, many domestic migrant workers are required to work between 13 and 19 hours a day, seven days a week. In a large number of cases, the women also experience verbal abuse and food deprivation at the hands of their employers.

604. Employers often prohibit their domestic migrant workers from leaving the house unaccompanied and also confiscate their passports and other identity documents. These restrictions isolate the workers and make them more vulnerable to physical and sexual abuse in the employer's home.

605. While commending the Government on a number of important measures implemented in recent years to prevent abuse and exploitation of domestic migrant workers, the Special Rapporteur also noted that certain discriminatory norms and policies continue to exist, which inadvertently render them more vulnerable to abuse, trafficking, exploitation and restrictions of physical freedom:

606. Domestic workers are explicitly excluded from the protection of the Employment Act, which guarantees the right to one day of rest per week and a maximum of 44 work hours per week. The Employment Act also limits salary deductions to 25 per cent of the monthly salary for a maximum period of 12 months. The Employment of Foreign Workers Act, which applies also to domestic migrant workers, does not provide for equivalent rights.

607. The Employment Agencies Act stipulates that employment agencies must not charge job seekers more than 10 per cent of their first month's earnings. However, the Ministry of Manpower considers the recruitment, transfer and placement fees, which domestic migrant workers are charged by their agents, to be private loans that are not subject to the limit imposed by the Employment Agencies Act.

608. Employers hiring domestic migrant workers have to take out a S\$ 5,000 bond, which they forfeit if they fail to pay for the domestic worker's repatriation costs or if the domestic worker runs away from the employer's home. The latter gives employers an incentive to prohibit their domestic workers to leave their workplace in the employer's home unaccompanied.

609. Domestic migrant workers also face limitations of their reproductive and marriage rights:

610. Singaporean labour regulations prohibit domestic migrant workers from becoming pregnant or giving birth during the course of their stay in Singapore. Unless pregnant workers agree to an abortion, they will be deported. For employers, who have economic and personal interests not to see their domestic workers deported, this limitation of reproductive rights provides further incentive to limit their workers' outside contacts and prohibit them from leaving the house on their own.

611. The same set of labour regulations prohibits domestic workers from marrying Singaporean citizens or permanent residents during their stay, unless they receive a special permission from the Comptroller of Work Permits.



### **Response from the Government**

612. By letter dated 5 April 2006, the Government informed that Singapore is committed to protecting the well-being of the 160,000 foreign domestic workers (FDWs) working in Singapore. The vast majority of FDWs experience safe, productive and fulfilling work in Singapore. Over 80 per cent of FDWs have indicated that they are happy to work in Singapore, according to an independent poll conducted by the Singapore Press Holdings in December 2003. One in three FDWs extend their two-year employment contracts with the same employer. Thus, FDWs who choose to work in Singapore do so because of better pay and working conditions compared to their home and other countries.

613. FDWs in Singapore receive full protection under Singapore laws including the Employment of Foreign Workers Act (EFWA), Employment Agencies and the Penal Code. The Singapore Government has been taken firm enforcement actions against errant local employers and employment agents. In addition, the Government has extensive outreach programmes to educate the FDWs in Singapore on their rights under the law and the channels of assistance available to them. Please see attached Annex for the response of the Government to the specific issues raised in the letter of the Special Rapporteurs.

614. Clarification of the actual foreign domestic worker (FDW) situation in Singapore:

#### Protection of the Rights of FDWs

615. The Employment of Foreign Domestic Act (EFWA) imposes work permit conditions on employers to provide adequate rest and meals, and ensure work safety, proper housing and prompt salary payment. Errant employers who breach these conditions can be punished with a fine of up to \$5,000 and a jail term of up to 6 months.

616. FDWs also receive special protection under the Penal Code. In 1998, the Penal Code was amended to increase by one-and-a-half times the penalties for acts of abuse against FDW by their employers or household members, compared to the same acts against any other persons including Singaporeans. This has led to a marked decrease in abuses against FDWs, from 157 in 1997 to 59 cases last year.

617. In 2005, Five employers were fined for failing to pay their FDWs and ordered to make full restitution of the outstanding salary. Three of these employers were subsequently jailed when they defaulted on the court order. From 2001 to 2005, a total of 26 FDW employers or their household members were also jailed for abusing their FDWs. All convicted employers and their spouses are permanently barred from employing FDWs.

618. To ensure that FDWs are equipped to protect themselves and are fully aware of their rights, Singapore has in place extensive measures to educate FDWs on these aspects, and various channels of assistance that FDWs can turn to for help. Upon their arrival in Singapore, each FDW is given a pocket-sized handy guide published in their native languages, containing the Ministry of Manpower's dedicated hotline number for FDWs to seek help or report grievances. It also contains the contact numbers of the Police, the relevant Embassies and volunteer organizations.

619. All first-time FDWs are also required to attend a Safety Awareness Course to acclimatize them to working in a high-rise urban environment. The channels of assistance they can turn to are again highlighted during the course. As the FDWs attend these course on their own, without their employers or agents present, it also accords them ample opportunity to express any problems on their employment freely or seek help if they so wish.

620. To ensure that FDWs are better able to understand and exercise their rights under Singapore law, with effect from 1 January 2005, all new FDWs entering Singapore must be at least 23 years of age (the previous minimum age being 18 years) and have undergone eight years of formal education.

621. In addition, to remind employers of their responsibilities and empower FDWs to exercise self-help in safeguarding their rights and safety, the Ministry of Manpower (MOM) has been stepping up its public outreach efforts to emphasize key messages such as safety in high-rise buildings, the rights and obligations of employers, as well as avenues through which FDWs can seek help. These outreach efforts include posters displayed in residential neighbourhoods and bus stops, as well as the distribution of goody bags containing collaterals imprinted with MOM's helpline at community events.

#### Regulation of the Employment Agency Industry

622. MOM closely regulates the employment agency (EA) to prevent any exploitation of FDWs. All EAs are licensed, and can be punished with a fine up to \$5,000 and/or two years' jail if convicted under any offence under the EA Act. EAs also risk losing their license permanently for any infringements under the Act. Since January 2004, the Ministry has revoked the licenses of three EAs and not renewed the licenses of another ten EAs.

623. MOM also requires all EAs involved in placing FDWs to be accredited by independent bodies. One key accreditation criterion is that EAs must ensure the employers and FDWs enter into employment contracts, which specify the terms of employment. As such, FDWs have the same right as all employees to accept or reject work conditions imposed, including the number of rest days.

624. To further shape the behaviour of the EA Industry, the Ministry has introduced a demerit point system (DPS) for EAs since 1 February 06. This awards demerit points to EAs for regulatory infringements. The points that each EA has accumulated are also made public. EAs that accumulate excessive demerit points will also have their licenses removed by the Ministry.

625. Nonetheless, while MOM regulates the commission charged by Singapore-based EAs, the loans that FDWs take in their home countries fall outside Singapore's jurisdiction. They have to be handled within the jurisdictions of the labour exporting countries.

#### Freedom of Movement of FDWs

626. It is a serious offence under the Penal Code to wrongfully confine any person.

627. Anyone found wrongfully confining a person faces a jail term up to one year, and/or a fine of up to \$1,000 under the Penal Code. It is also an offence under the EA Rules for the EA to

withhold either the passport or work permit of an FDW. The Police and MOM take such offences serious and will prosecute any EA seeking to restrict the FDW's movements.

#### Marriage Restriction for FDWs

628. As a small city-state of four million people with limited land resources, it is necessary for Singapore to maintain a strict immigration policy. Singapore therefore requires work permit holders to obtain prior approval from the Controller of Work Permits to go through any form of marriage or apply to marry a Singapore Citizen or Permanent Resident (CS/PR). A key consideration in determining the grant of approval is whether the couple would be financially self-reliant.

629. The Government noted that other countries also impose certain restrictions of marriage on foreign workers. For example, since 1 February 2005, the United Kingdom has stipulated that any foreign worker (including higher-skilled foreign workers) must obtain permission before getting married in the United Kingdom.

#### **Observations**

630. The Special Rapporteur thanks the Government for its reply to her communication of 16 February 2006.

### **South Africa**

#### **Letter of Allegation**

631. By letter dated on 28 February 2006, the Special Rapporteur on violence against women, its causes and consequences has sent a letter of allegation concerning the murder of Z.N., a 19-year-old lesbian woman, outside her house in Khayelitsha, Cape Town.

632. According to information received, on 4 February 2006, Z.N. and a lesbian friend, age 17, were approached by a woman who taunted them about their sexual orientation, saying that they "wanted to get raped." The woman gathered a group of about 20 young men and boys who then attacked the two women. Z.N. was beaten, stoned and stabbed to death. Her friend managed to escape. Fearing for her life, she is currently under the protection of a non-governmental organization.

633. The police have since identified and arrested six of the alleged perpetrators, aged 17-19 years. Reportedly, however, no official has publicly condemned the incident as a hate crime. The Special Rapporteur was informed that this case does not constitute an isolated incident and that lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths. Some parts of the population believe, for instance, that lesbian women would change their sexual orientation if they are raped by a man.

#### **Observations**

634. The Special Rapporteur regrets that the Government, while formally acknowledging receipt of her communication, has not yet provided a substantive response to the allegations

submitted. The Special Rapporteur would like to express her interest in receiving a substantive response from the Government.

### **Sri Lanka**

#### **Allegation Letter**

635. On 16 January 2006 the Special Rapporteur has jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a letter of allegation to the Government of Sri Lanka concerning two incidents of killing of Tamil civilians.

636. According to the reports received, I.T., a woman aged 20 from Pungudutivu, Jaffna Peninsula, was last seen alive on 16 December 2005, when she left her home at 6.15 pm. on her way to the Sri Lankan Navy camp in Pungudutivu. On the evening of 17 December 2005, her body was found in a well. It had been weighed down with heavy stones. The following morning, her body was taken to the Jaffna Teaching Hospital, where a post mortem was performed. The Judicial Medical Officer reportedly found stab wounds in her chest and near her hips. He concluded that I.T. had been raped before being killed. The medical report was given to police, who submitted it to the Magistrate's Court on 20 December 2005. The Criminal Investigation Department (CID) has been at the crime scene and has heard from the victim's relatives.

637. The second set of allegations transmitted in this joint communication concerned five male Tamil youths and is therefore not repeated here.

#### **Response from the Government**

638. On 3 July 2006, the Government of Sri Lanka replied to the communication of 16 January 2006. With respect to the death of I.T., the Government stated that initial investigations were carried out by the Kayts police and were later taken over by the Criminal Investigation Division (CID) under the directions of the Inspector General of Police. Initial investigations were a great deal hampered due to agitation campaigns covertly organized by the Liberation Tigers of Tamil Eelam (LTTE) and the interference by various other disruptive elements bringing frivolous and baseless accusations. The police were prevented from guarding the scene until the arrival of the Magistrate due to public agitations which resulted in tampering of evidence at the scene as well as destroying valuable evidence. The Government reported that the Magistrate was only able to visit the scene a day after the alleged incident, on 18 December 2005. Even then, when the Magistrate visited the scene, there was a public agitation covertly organized by the LTTE. The Magistrate ordered the conduct of a post mortem inquiry which revealed that the death had been caused due to strangulation subsequent to committing vigorous rape. Evidence had been gathered by both the Kayts police and the CID, including a camouflage cap numbered 410836. The cap was similar to those used by the security forces. The CID made inquiries regarding the cap and revealed that the number corresponded to a certain (Cpl. WWNAK Weerasuriya of the 8th battalion Gemunu watch of the Sri Lanka Army, based in Batticoloa). The man questioned was based in Batticoloa and the Government has assured the Special Rapporteur that inquiries were continuing.

639. The Government also reported that the security situation in the area has restricted the movements of the investigators in the gathering of information and intelligence. The lack of

cooperation by the public has also hindered the ongoing investigations. Meanwhile, the facts have been reported to the Magistrate Courts, Kays, under case No. B212/2005. The case was called on 12 July 2006 to report the progress of the investigations. A further investigation has been conducted by the Sri Lanka Navy due to public agitation and accusations levelled at the personnel. Further inquiries, the Government stated, were being conducted to identify and apprehend the culprits, in spite of lack of public cooperation and in the midst of campaigns and interferences by various fronts acting at the behest of the LTTE.

#### **Response from the Government to an allegation letter sent in 2005**

640. By letter dated 6 October 2006, the Government responded to an allegation letter sent by the Special Rapporteur and the Special Rapporteur on the sale of children, child pornography and child prostitution on 28 November 2005 concerning the abduction and rape of S.D.R. The Government indicated that the victim, aged 15, had been abducted on 19 September 2005 by three persons in a three wheeler taxi that took her to the town of Nagasterma in Thalawakelle Police area where she was raped by all three of them in an abandoned building previously used as a printing press. The full details of the allegations submitted have been reflected in the Special Rapporteur's previous Report on Communications sent and received (E/CN.4/2006/61/Add.1).

641. On receipt of this complaint, the Government mentioned that officers of Talawakelle Police produced the victim before the Judicial Medical Officer at Base Hospital, Nuwara Eliya under Judicial Medical form No. 20 A/000049 and was warded after consultations for necessary examination.

642. Moreover, acting on information given by the victim, the Police visited the scene and made necessary examinations. Therefore, on 26 September 2006, Police arrested the two perpetrators who are alleged to have committed the said crime: P.M.S. of Devon Tea Estate, Talawakelle and S.S. of Pharmston Tea Estate, Talawakelle. The police also recovered three wheeler taxis and produced the same together with the suspects before Magistrate Court/Nuwara Eliya under Case No: B668/05 and the suspects were remanded.

643. At the identification parade held on 11 October 2005, the victim identified the above two suspects, out of the three who raped her. In fact, the third suspect T.S. of Chandinigama Estate, Talawakelle who was said to be absconding was finally arrested on 21 June 2006 and remanded. And at the investigation parade, held on 27 June 2006 at Magistrate Court, Nuwara Eliya, the victim identified him as the third person who raped her.

644. The Government also noted that investigations in this case were completed and the reports of the medical examinations together with the statements of witnesses and of the suspects were forwarded to Hon. Attorney General to contemplate direct indictments in High Court of Nuwara Eliya. His advice is currently awaited. As for the suspects, they are presently on court bail and the Magistrate Court Case No. B 668/05 is to be called on 21 November 2006.

645. Furthermore, the Government indicated that the names of the perpetrators given in the summary of the case were incorrect. In fact, the correct names and addresses, who are actually all residents of Tea Estate Quarters, are the one in its report. Finally, it noted that the victim had not made any request for special protection but the Police, however have taken adequate security measures to take care of the victim from reprisals.

### **Observations**

646. With respect to the rape and murder of I.T., the Special Rapporteur welcomes the Government's detailed reply of 3 July 2006, but requests information about the outcome of the 12 July 2006 proceedings. The Special Rapporteur would also appreciate being kept informed of any developments of the investigations by the Sri Lanka Navy of its personnel. The Special Rapporteur thanks the Government for its reply to her communication sent on 29 November 2005.

## **Sudan**

### **Urgent Appeal**

647. On 20 March 2006 the Special Rapporteur has together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government regarding the Sudan Social Development Organization (SUDO), a humanitarian and development NGO which works in West Darfur, Sudan. SUDO also monitors human rights violations in Darfur and assists women who have suffered gender based violence as a result of the conflict in Darfur.

648. According to the information received: On 11 March 2006 the Humanitarian Aid Commission (HAC), a Government agency, issued a formal notice to the directors of SUDO in Zaillingee and Geneina, ordering the suspension of all its activities within West Darfur. It is reported that the directors of SUDO were ordered to hand over all the assets of the organization and to close down its health and nutrition centers and its food distribution unit. It is alleged that the legal grounds for this suspension are based in the "Organization of Humanitarian and Voluntary Work Act", but the HAC did not specify which provisions of the Act SUDO had violated. This legislation was the subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 16 November 2005. In that communication, concern was expressed regarding the powers granted to the HAC by this legislation. Particular concerns were expressed regarding the HAC's powers to suspend NGO activities, dissolve their executive committee and replace it with a transitional committee, cancel registration, and expel International NGOs from the Sudan upon approval from the Minister, without judicial review.

649. Concern is expressed that the suspension of the activities of SUDO is connected with its work in defense of human rights and will prevent it from carrying out its humanitarian and development work.

### **Allegation letter**

650. By letter dated on 15 August 2006 the Special Rapporteur has jointly with the Special Rapporteur on the question of torture and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an allegation letter to the Government concerning the rape of a group of women at Kalma Internally Displaced Camp in Nyala, Southern Darfur.

651. According to information received: On 24 July 2006, approximately 25 armed militias, some wearing army uniforms, attacked a group of twenty women aged 19-42 outside Kalma Internally Displaced Camp, while the women were collecting firewood. All women belong to the African Fur ethnic group. The militiamen beat the women with the butts of their guns and flogged them before raping seventeen of the women. According to the information received, there has been a steady gathering of armed militias, reportedly the Arab Janjaweed, in the surrounding areas of Kalma camp. In the past, these militias have attacked humanitarian workers and undertaken nightly armed incursions into the camp in order to loot property.

652. Strong concern is expressed about these allegations of sexual assault committed by militia men against internally displaced women. We strongly urge the Government to protect internally displaced persons, especially women and girls, from all forms of sexual and other violence and to arrest, disarm and prosecute the perpetrators.

### **Observations**

653. The Special Rapporteur regrets that the Government did not reply to any of her communications sent in 2006 and reiterates the recommendations contained in the report on her mission to the Darfur region of Sudan (E/CN.4/2005/72/Add.5). The Special Rapporteur provided follow-up information to this report in her oral statement to the second session of the Human Rights Council in September 2006, where she noted that, according to reports from numerous credible sources, the situation of women in Darfur has regrettably not improved. The signing of the Darfur Peace Agreement has not resulted in a decline in the incidence of rape or other acts of violence against women. Throughout Darfur a surge in sexual violence continues as militia and rebel factions target women who are perceived to support opposing factions and those in the IDP camps.

654. The Special Rapporteur reiterates her interest in receiving replies from the Government in regard to allegations submitted.

## **Thailand**

### **Allegation Letter**

655. On 18 July 2006 the Special Rapporteur has jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on trafficking in persons, especially women and children sent an allegation letter to the Government concerning the women and children refugees from Myanmar at risk of trafficking.

656. According to the information received: It is reported that hundreds of thousands of people from Myanmar, many of them women and children, have fled into neighboring Thailand in the course of the past two decades, escaping armed conflict and rampant human rights violations in their homeland. Concern has been expressed about their vulnerable situation, which reportedly puts them at risk of continued human rights abuses. It is also reported that these women and children are particularly at risk of trafficking, and the sexual and physical exploitation and forced labour associated with it.

657. It is further alleged that these persons seek assistance in crossing the border. Sometimes family or community members offer such help. At other times, people pay “carriers” to help them cross the border undetected. Such transportation can sometimes be accompanied by an offer of employment.

658. It is also reported that people from Myanmar who wish to enter Thailand and do not have enough money when they arrive at the border to pay a carrier have to wait at the border area anywhere from a few days to months before crossing it. It seems that trafficking often occurs during this vulnerable time. It is further reported that sometimes carriers themselves are in fact engaged in trafficking. The carriers tell relatives of women or children that life is better in Thailand. These persons are then forced to work without pay. It is alleged that some Thai officials could collaborate with the traffickers.

659. Concern has also been expressed about the fact that, after being trafficked, women and children may end up in a range of abusive situations, including forced prostitution, forced begging, abusive domestic work, or work in substandard labour conditions in textile factories, fishing or other industrial settings. According to the allegations received, sometimes, the victims are not paid at all or are paid a wage far below that promised or allowed under Thai law. Labour conditions for trafficked persons are reportedly characterized by long hours and physical and sexual abuse. Some women working as domestic servants reported that their inability to speak Thai left them isolated, and the nature of their work, which often involves living in their employer’s homes, left them vulnerable to abuse.

660. Moreover, the fear of deportation haunts people living without status, including victims of trafficking. Women and children may be especially susceptible to ill-treatment, and are reluctant to complain due to fear of persecution by the Myanmar military if returned as well as the fear of stranding their families without economic support if they lose their source of income, as abusive as their employment situation might be.

661. Sources also allege that the number of children who arrive alone in Thailand has significantly increased in the past four years. The families are often separated once in Thailand. In other cases, children may be left alone while their parents are at work. Children who are alone are reportedly more vulnerable to abuses such as trafficking.

662. It is further alleged that some children are trafficked from inside Myanmar across the border into Thailand. The traffickers then collect a large group of children in Mae Sot (Thailand), directly across the border and transport the children to Bangkok. The traffickers lie to the children’s parents, telling them that the children will live “an easy, better life”.

663. Once they arrive in Bangkok, the traffickers reportedly force the children to communicate to their parents that they are well cared for. Gradually, however, the traffickers tell the parents that the children are misbehaving, that they are not working hard enough, and that the children are forgetting them. Therefore, when a child does not send money back to the parents, the parents assume it is because the child is not working hard enough or is no longer gainfully employed. This is to drive a wedge between the children and their parents in order to sever the child’s familial ties. If the parents continue to insist that they want to see their children, the trafficker may send the child back in order to avoid trouble and unwanted attention. In most cases,



however, the parents are unable to investigate the whereabouts of their child and thus are forced to give up finding them, at which point the trafficker may sell the child to someone else.

664. It is alleged that a common strategy is to force the children to sell flowers or trinkets or to beg on the streets of Bangkok. If the child does not make the required amount of money each day, he is reportedly deprived of food, beaten or forced to stay on the street.

665. Concerning the sex industry in Thailand, in addition to the lack of legal residence and employment options, trafficked persons who are removed from the brothels are reportedly not screened for refugee status. Sources alleged that these trafficked victims are reluctant to share information because they typically do not want to return home in Myanmar. Besides, according to the information received, the witness protection in Thailand is insufficient and if the trafficked person presents testimony, the person would be at risk of retaliation.

666. Furthermore, prosecutions that are supposed to result from the brothel raids are often unsuccessful. The prosecution effort is primarily aimed at actors who are only minor figures in the trafficking networks, such as the pimps and brothel owners. In the meantime, the trafficking victims may be held at the shelters indefinitely, waiting to testify in the proceedings. After testifying, the victims are reportedly deported, including those under age 18.

### **Observations**

667. The Special Rapporteur regrets that the Government did not reply to her communications sent on 18 July 2006 and would like to reiterate her interest in receiving a reply from the Government in regard to the allegations submitted.

## **Tunisia**

### **Appel urgent**

668. Le 31 janvier 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme a envoyé un appel urgent concernant les traitements subis par les citoyens de la Tunisie.

669. Selon les informations reçues, le 18 janvier 2006, un dispositif policier aurait été déployé devant le siège de l'Association tunisienne des femmes démocrates (ATFD) et les membres de l'association auraient été empêchés d'entrer pour participer à leur réunion. Les policiers en civil auraient usé de violences contre la présidente de l'ATFD, A.B. ainsi que B.M., M.B. et L.C.

670. Le 24 janvier 2006, une réunion du Collectif du 18 octobre pour les droits et les libertés, prévue au local du Forum démocratique pour le travail et les libertés (FDLT), n'aurait pu se tenir, la police politique ayant interdit l'accès au local du FDLT. Plusieurs défenseurs des droits de l'homme et opposants, particulièrement A.H., H.H. et L.H., auraient été violemment agressés par la police déployée sur place.

671. Contrairement aux allégations qui sont parvenues au Rapporteur spécial, l'intéressé ne fait l'objet d'aucune poursuite judiciaire ou de harcèlement. Il exerce sa profession de journaliste de

façon normale. Il a même publié, en 2004, un livre intitulé « Bourguiba et l'islam : le leadership et l'imamat », disponible dans les librairies tunisiennes.

672. La Tunisie a toujours autorisé l'existence de formations et d'organisations à la condition que leur action soit conforme aux dispositions légales en vigueur. Néanmoins, toute personne entreprenant une quelconque activité au nom d'une formation qui n'a aucune existence juridique, est en infraction avec la loi et est, comme partout, passible de poursuites judiciaires.

#### **Réponse du Gouvernement**

673. Concernant les membres de l'Association tunisienne des femmes démocrates (ATFD) et du « Collectif du 18 octobre pour les droits et les libertés », par lettre en date du 5 octobre 2006, le Gouvernement a répondu que les allégations au sujet de « l'empêchement » d'entrer au siège pour participer à une réunion et l'usage de la violence contre certains d'entre eux sont dénuées de tout fondement. L'ATFD exerce ses activités, comme toute autre formation légale, en toute liberté sans aucune entrave dans le cadre de l'État de droit et du respect de la loi. Le « Collectif du 18 octobre pour les droits et les libertés » n'a aucun statut juridique en Tunisie, ses membres ont choisi d'agir en marge de la légalité cherchant des actions spectaculaires à usage de communication douteuse en vue de provoquer agitation et désordre.

#### **Observations**

674. La Rapporteuse spéciale remercie le Gouvernement pour sa réponse.

### **Turkey**

#### **Urgent Appeal**

675. By letter dated on 23 June 2006 the Special Rapporteur on violence against women, its causes and consequences, has jointly with Special Rapporteur on trafficking in persons, especially women and children, sent an urgent appeal to the Government regarding T. B., a German citizen of Turkish descent. According to information received:

676. T. B. is a German citizen from Hamburg. In April 2006, T. B. traveled with her mother from Hamburg to the settlement of Karastlak Köyü in the village of Yeni Halfeti, Şanlıurfa province, Southeast Turkey, where her grandmother and other relatives reside. Allegedly, her family had pretended that she was going to vacation in the village.

677. Upon T. B. arrival in the village, her mother took her passport and identity documents away and told her that she had to enter into an arranged marry with a close relative. According to the latest information received, T. B. is still in Yeni Halfeti. Reportedly, she faces serious limitation of her freedom of movement and is only on rare occasions able to leave her grandmother's house.

678. Concern is expressed that T. B. maybe forced to marry her relative against her will or face severe violence, if she refuses.

679. We appeal to your Excellency's Government to intervene in this case and ensure that the competent Turkish authorities undertake all necessary action to protect T.B. from forced marriage, any form of violence or the threat thereof.

#### **Response from the Government**

680. By letter dated 29 June 2006, the Government informed that it was established that T. B. during her vacation in Turkey, contacted the Provincial Gendarmerie Command in Şanlıurfa by phone on 30 May 2006 and requested help from the authorities, stating that there were attempts to force her to get married to her uncle's son. The gendarmerie authorities had to refer the matter to the Foreigners Section of the Police, since T. B. was a German citizen. T. B. was then assisted by the authorities to return to Germany on 2, June, 2006. On 27 June 2006, the Provincial Gendarmerie Commander in Yeni Halfeti visited T. B.'s grandmother's premises and confirmed that she was not in Turkey.

681. According to a relative in Germany whom the Turkish authorities have contacted, T. B. has been granted protection at a social institution in Germany under the German laws and she will be hosted in this institution until October 2006 when she will complete the age of 18.

682. In this framework, it has been confirmed that a forced marriage has not taken place during her stay in Turkey.

#### **Observations**

683. The Special Rapporteur would like to thank the Government for its reply to the communication of 23 June 2006 and would like to welcome the steps which the Government took to protect T.B. The Special Rapporteur would like to receive follow-up information on whether criminal action was taken against any of the alleged perpetrators.

### **United Arab Emirates**

#### **Allegation Letter**

684. On 18 October 2006 the Special Rapporteur has jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on trafficking in persons, especially women and children sent an allegation letter to the Government concerning S.M., the founder of Villa N. 18 - City of Hope, a shelter for abused and/or exploited women, including abused migrant domestic workers, trafficked women and minor girls. In early August 2006, the competent authorities have reportedly accused S.M. of having assaulted a 15-year old girl who had sought refuge in the shelter. The authorities have reportedly also threatened to close the shelter, although no formal decision to that effect has yet been taken.

685. Sources allege that the criminal charges against S.M. are fabricated. Concerns are expressed that these charges and the possible closure of the shelter may be in retaliation for her activities in defense of women's rights since the shelter's work is reportedly viewed as a threat to the traditional culture and family values of the country and its continued operation largely depends on S.M.'s work.

686. We are also concerned that the charges against S.M. and the possible closure of the women and children shelter could lead to a protection gap for women and children at risk of violence, including migrant domestic workers and minor girls. We call on your Excellency's Government to investigate the allegations against S.M. in an objective, impartial, fair and speedy manner awarding her all procedural guarantees set out in international and national law.

### **Observations**

687. The Special Rapporteur regrets that the Government did not reply to her communication sent on 18 October 2006 and would like to reiterate her interest in receiving a reply from the Government in regard to the allegation submitted.

## **United Kingdom of Great Britain and Northern Ireland**

### **Response from the Government to an allegation letter sent in 2005**

688. On 28 April 2006, the Government responded to the communication sent jointly by the Special Rapporteur, the Special Rapporteur on the sale of children, child prostitution, and child pornography and the Special Rapporteur on trafficking in persons, especially women and children, on 28 November 2005 concerning the situation of children trafficked to and abused in the United Kingdom. According to information received, children, particularly girls, as young as 2 years old, were reported to be increasingly trafficked into the country for domestic servitude, prostitution or to facilitate benefit fraud. The full details of the allegations submitted have been reflected in the Special Rapporteur's previous Report on Communications sent and received (E/CN.4/2006/61/Add.1).

689. The Government assured the Special Rapporteur that it remained committed to providing support for all victims of trafficking and that it was fully committed to the implementation of the Optional Protocol to the United Nations Convention on Transnational Crime. Its strategy to combat human trafficking is multi-faceted and aims to assure that there is legislation in place to criminalize trafficking, that there is cooperation with international partners to work to prevent trafficking at its source and that enforcement action against traffickers is effective.

690. Legislation has actually been strengthened in order to cover trafficking for all purposes. The offence of trafficking for prostitution was introduced in the Nationality, Immigration and Asylum Act 2002 and carries a maximum penalty of 14 years imprisonment. Moreover, the Sexual Offence Act 2003 introduced new wide-ranging offences covering trafficking into, out of or within the United Kingdom for any form of sexual offence, which also carries a 14 year maximum penalty. The Act also introduced a range of new offences covering the commercial sexual exploitation of a child, protecting children up to 18. These include buying the sexual services of a child (for which the penalty ranges from imprisonment for seven years to life depending on the age of the child) and causing or inciting, arranging or facilitating and controlling the commercial sexual exploitation of a child in prostitution or pornography, for which the maximum penalty is 14 years imprisonment. Another new offence, of "trafficking for exploitation", which covers trafficking for forced labour and the removal of organs, was introduced in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. All these measures have taken into account the UK's international obligations and fully comply with all

legislative requirements under the United Nations Protocol to Prevent and Punish Trafficking in Persons (Palermo Protocol).

691. The Government added that there had been a number of arrests and convictions since the new legislation received Royal Assent. In April 2004, L. P. was sentenced to 23 years in prison for trafficking women for prostitution. In December 2004, two men were the first to be prosecuted under the specific offences of trafficking contained in the Sexual Offences Act 2003, together with associated charges such as rape and false imprisonment. This was quickly followed by three further successful prosecutions in March 2005 for human trafficking.

692. In order to strengthen enforcement, a multi-agency task force was set up, under the name of REFLEX, which is overseen by the National Crime Squad. Reflex aims to reduce the harm caused by the serious and organized crime involved in people smuggling and human trafficking. Its establishment has enhanced coherence of the UK's broad response to organized immigration crime and brings government departments and law enforcement agencies together to foster an intelligence-led operational response.

693. Knowledge of child trafficking amongst appropriate professionals has also improved and a best practice toolkit on trafficking has even been published (available at [www.crimereduction.co.uk/toolkits](http://www.crimereduction.co.uk/toolkits)). This acts as a guide for immigration officers, police and other professionals who might potentially deal with the victims of trafficking, whether they are adults or children. In particular, it helps those concerned to treat victims of trafficking fairly and appropriately.

694. In addition, the Immigration Service has reviewed and updated the Unaccompanied Minors Best Practice Guide to include a chapter on child trafficking. The guide aims to equip officers with the tools they need to recognize children who may have been trafficked and contains also a section on trafficking, the aim of which is to enable Immigration Officers to refer any children who may have been trafficked to the appropriate practitioners. An Interviewing Minors training course has been made available to border control staff since November 2003. Recognizing signs of trafficking is an important aspect of this course. Staff who have received this training have formed "Minors Teams" at ports, and deal with cases of unaccompanied minors arriving from the United Kingdom and work closely with social services, police and child protection officers.

695. The Government recognized that when victims of trafficking are children, they are likely to be in need of welfare services and, in many cases, protection under the Children Act 1989. Children's Services have a duty to safeguard and promote the welfare of trafficked children following an assessment of their circumstances. Where there is risk to the life of the child or a likelihood of serious harm, an agency with statutory child protection powers, such as the police or councils with Children's Services responsibilities, should act quickly to secure the immediate safety of the child. Under Section 20 of the Children Act 1989, a local authority may also provide accommodation for any child within its area if it considers that this would safeguard or promote the child's welfare.

696. The Government added that after the murder of Victoria Climbié, the United Kingdom Government announced in January 2001 a statutory inquiry, chaired by Lord Laming, to look at every aspect of the case. In January 2003, the Laming report was published (and can be viewed at <http://www.victoria-climbié-inquiry.org.uk/>.) In response to the said report, the Government

published a Green Paper, entitled "Every Child Matters". Following extensive public consultation on it, the Children Act 2004 was introduced. In conjunction with the legislation a highly significant cross-government strategy known as the "Every Child Matters: Change for Children Programme" is also currently underway. Moreover, officers in the Department for Education and Skills will be publishing revised and updated multi-agency guidance to all statutory bodies which have a role in safeguarding children and protecting their welfare. This guidance entitled "Working Together to Safeguard Children" provides focused guidance to practitioners working with children who may be particularly vulnerable to abuse or exploitation.

697. Regarding the identification of children missing education, the Government mentioned that it had strengthened arrangements. Local authorities have now a named individual responsible for receiving details of children found to be missing education and for brokering support for them through the most appropriate agencies. This is supported by the good practice guide, "Identifying and Maintaining Contact with Children Missing or At Risk of Going Missing from Education" that has provided a practical model of process steps to help Local Education Authorities (LEAs) in their implementation of effective systems for identifying and maintaining contact with children missing, or at risk of going missing, from education. Nevertheless, it noted its deep concern about any child missing from education, as it is not just the child's educational development that is at risk, but also potentially his/her safety and welfare. The Department for Education and Skills, the Home Office, and the policing service are continuing to work together to reinforce local procedures to ensure that any children at risk will be identified and appropriate safeguarding action taken (further information on this and the other elements of the change for children programme is made available on [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)).

698. Furthermore, there have been circumstances where concerns about the safety and welfare of children missing from school are sufficient to warrant police involvement. Initial enquiries made by the Metropolitan Police officers investigating the "Adam" murder (the case of the torso of a boy found in the Thames) actually identified 300 cases where African or Caribbean children had not returned to school following the 2001 summer break. However, no evidence was uncovered to suggest that any of them had come to harm, and there were no allegations from any of their families or schools that the welfare of these children was significantly at risk. The Metropolitan Police Service has made it clear that they believe the type of crime of which Adam was the victim to be extremely rare. This case did, nevertheless, increase concerns about a type of abuse which it was thought might emanate as a consequence of some belief systems in African communities. As a result, Operation Violet was launched by London's Metropolitan Police to support the education of new community groups and representatives in acceptable and legal methods of child discipline in this country. The operation will also initiate intelligence-led, pro-active investigations into allegations of ritualistic belief-related child abuse to identify and prosecute any offenders.

699. On the question pertaining to children brought to the United Kingdom to cure sufferers from HIV through sexual intercourse, the Government indicated that it had no information to support this, although they were aware that it is a belief in some regions of Africa where HIV/AIDS has reached endemic proportions.

700. The United Kingdom Government was furthermore surprised about the claim mentioned in the communication on the shortcomings within the children's services, police, and the immigration service resulting in children becoming victims of abuse. It indicated that there had

been several operational projects dedicated to the investigation of children entering the United Kingdom who may be at risk from different forms of exploitation. For example, in order to improve the sharing of information between the Immigration Services and Local Authorities, joint Treasury and Home Office funding has been used to set up a National Register of Unaccompanied Children (NRUC) database. By linking the databases with others concerning children at risk, the Government noted that it would be able to better address their needs, and ultimately improve child protection amongst this group of vulnerable children.

701. Information on the work from Operation Paladin Child, an operation led by London's Metropolitan Police Service between August and November 2004 to explore the nature of child migration from non-EU countries to the United Kingdom through London was also provided. The communication referred to 1,738 children at Heathrow under "suspicious circumstances" between August and November 2004, but the Government notes that this is surely a misunderstanding. The number actually refers to the results of Operation Paladin Child, where 1,738 non asylum-seeking unaccompanied minors were purposely identified by British Immigration Service during a three month study period, so that the researchers could evaluate their circumstances in detail. Of these, 551 (30 per cent) were identified as potentially vulnerable. Social Services departments were unable to trace 12 of the 551 unaccompanied minors, and police enquires into their whereabouts continue. Operation Paladin did not find conclusive evidence that children were being trafficked into the UK through Heathrow, although it was acknowledged that the study was too limited in scale to predict fully the level of illegal child migration to the UK. Moreover, it is to be mentioned that the Metropolitan Police Child Abuse Investigation Command (CAIC), with funding from REFLEX have continued a presence at Heathrow airport as a result of Operation Paladin as part of a permanent multi-agency partnership to address the specific safeguarding needs of unaccompanied minors. They also have safeguarding responsibilities at Lunar House Asylum Screening Unit in Croydon, at Waterloo Station, and at London City and Gatwick Airports, together with other smaller airports within London, such as Biggin Hill. Police forces in other parts of the country are now working with immigration officers to use experience gained during Operation Paladin to work more effectively to safeguard children at other ports of entry.

702. The Government also added that by 2006 a Serious Organized Crime Agency (SOCA) aiming to reducing the harm caused to the United Kingdom and its citizens by organized crime including the trafficking of drugs and people would be created. This will surely have a United Kingdom-wide remit. The Home Secretary has made it clear that people smuggling and trafficking should be SOCA's second priority after tackling drugs trafficking.

703. Furthermore, on 1 April 2005, the Home Secretary announced plans to create a new national centre to protect children from sexual exploitation and combat online child abuse. This new centre will be called the Child Exploitation and Online Protection (CEOP) and will be affiliated to SOCA and will provide a specific service to address internet-based child abuse, as well as developing a strategic role in using its international networks to raise awareness, collect intelligence and combat child trafficking.

704. Finally, the Home Office recently published a draft United Kingdom Action Plan to combat Human Trafficking, which was out for public consultation until April 2006 (<http://www.homeoffice.gov.uk/documents/TacklingTrafficking.pdf>). This action plan sets out the progress the United Kingdom has made so far in the fight against people trafficking, and

proposes future plans for building on the existing work in this area. It also aims at addressing all forms of trafficking, and covering the prevention, investigation, law enforcement, prosecution, and the provision of protection and assistance to all victims of trafficking.

### **Observations**

705. The Special Rapporteur would like to thank the Government for its reply.

### **United States of America**

#### **Allegation letter**

706. By letter dated on 19 July 2006 the Special Rapporteur on violence against women, its causes and consequences has sent an allegation letter to the Government concerning J.L. from Castle Rock in Colorado.

707. According to information received: In 1999, a court in Colorado granted J.L. a protective order barring her estranged husband, S.G. from contact with her and the couple's three daughters (aged 7, 9 and 10 at the time) outside specified visitation periods. Allegedly, S.G. had subjected J.L. and the three children to continued emotional violence and also stalked J.L. following the couple's separation.

708. On 22 June 1999, S.G. kidnapped the three girls from J.L.'s yard violating the protection order. J.L. reported her daughters missing to the Castle Rock Police Department and was later able to contact S.G. on his mobile phone, learn his location and verify that he still had the three girls with him. Even though J.L. called and visited the local police station numerous times during that night and informed them that her husband was with the children at a local amusement park, the police failed to investigate the situation, to apprehend S.G. and to take steps to return the children to their mother. Later that night, S.G. drove to the police station and opened fire with a semi-automatic handgun he purchased earlier that day. The police shot and killed S.G. Upon searching the truck, they discovered the bodies of his three daughters, whom he had murdered earlier that evening.

709. In 2000, J.L. filed a federal lawsuit against the Town of Castle Rock and sought compensation based on the Police Department's failure to enforce the protective order. She argued that both Colorado's domestic violence mandatory arrest law and the court order require the police to enforce the terms of the order by arresting Mr. G. if he violated it. Although she lost at the district court level, the 10th Circuit Court of Appeals ruled that J.L. had the right to sue the Town of Castle Rock. Castle Rock appealed the decision and the United States Supreme Court agreed to hear the case. In the judgment of *Castle Rock vs. Gonzales*, handed down in 2005, the Supreme Court reportedly held that J.L.'s rights under the United States Constitution had not been violated and that she had no personal entitlement to police enforcement of the protective order.



**Observations**

710. The Special Rapporteur regrets that the Government did not reply to her communication sent on 19 July 2006 and would like to reiterate her interest in receiving a reply from the Government in regard to the allegation submitted.

**Uzbekistan****Urgent Appeal**

711. By letter dated on 4 April 2006 the Special Rapporteur has jointly with the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to the Government to bring its attention to the information regarding S.Y., L.V., E.U., all human rights activists, M.M., husband of E.U., M.D., G.Y., members of Ezgulik, I.M., B.B., K.S., members of the Human Rights Society of Uzbekistan (HRSU) in Jizzak province, T.H., chair of the Pakhtakor regional branch of the HRSU in Jizzak province and F.G., member of the Initiative Group of independent human rights defenders in Tashkent. E.U. was the subject of an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary General on the situation of human rights defenders on 6 September 2005. Ms T.H. was the subject of a letter of urgent appeal sent by the Special Representative of the Secretary General on the situation of human rights defenders on 26 October 2005.

712. According to the information received: On 26 December 2005 M.D. was arrested and accused of murder. It is reported that M.D. had been tortured while in detention.

713. On 3 January 2006, G.Y. was arrested and taken to the Regional Department of the Ministry of the Interior. It is reported that G.Y. was so badly beaten during her detention that she could not walk. She was subsequently released. G.Y. had been due to meet with representatives from foreign embassies before these events.

714. On 15 March 2006 M.M. was attacked by strangers at a bus stop and suffered injuries as a result of the attack. It is reported that E.U., along with S.Y., was the signatory to a letter published on 15 March 2006 condemning repressive acts by the authorities against Muslims.

715. On 17 March 2006 S.Y. was arrested and beaten by police officers. She is currently being held in a psychiatric hospital in Karchi. It is reported that S.Y., along with E.U., was the signatory to a letter published on 15 March 2006 condemning repressive acts by the authorities against Muslims.

716. On 17 March 2006 L.V., a 69 year old human rights activist, was arrested and is currently being held in a psychiatric hospital in Tashkent. It is reported that L.V. had made written complaints about illegal actions taken by police officers. In 2004, L.V. was forcibly detained in a psychiatric hospital.

717. It is reported that I.M. has been under constant surveillance and has been receiving constant threats ordering her to cease her human rights activities. It is alleged that on 3 August 2005 she was detained and beaten after she visited the home of the chair of the Human Rights Society of Uzbekistan (HRSU). At the time of these events she was three months pregnant. As a result of the beating, I.M. miscarried.

718. B.B. is also reported to be under constant surveillance and is not allowed to exit Jizzak province. It is alleged that B.B. was dismissed from her position of Chair of the Women's Council her village after the Andijan massacre.

719. T.H., K.S. and F.G. are all reported to be under constant surveillance. K.S. and F.G. are not allowed to receive their respective regions.

720. Grave concern was expressed that the above events are connected with the legitimate activities of the aforementioned women in defense of human rights, in particular their reporting of human rights violations by the Uzbek authorities. Furthermore, concern was expressed that this alleged pattern of intimidation against women human rights defenders and their families, which includes forced psychiatric detention, beatings and politically-motivated trials; may be an attempt to prevent women human rights defenders from carrying out their work.

### **Urgent Appeal**

721. By letter on 10 May 2006 the Special Rapporteur on violence against women, its causes and consequences has jointly with Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and Special Representative of the Secretary-General on the situation of human rights defenders, sent an Urgent Appeal to the Government to bring its attention to the situation regarding A.F., chairman of the Syrdaryn regional branch of the Human Rights Society of Uzbekistan (HRSU), T.Y., chairman of the HRSU, O.Y., the pregnant wife of A.F., B.K., chairman of the Dzhisak regional branch of the HRSU, M. M., chairman of the Samarkand branch of the HRSU and A.K., chairman of the Mirzaabad regional branch of the HRSU.

722. According to the information received: On 29 April 2006 police officers entered the apartment of A.F. and conducted a search without presenting a search warrant. They left the apartment but returned one hour later and attempted to search it again. O.Y., who was alone in the apartment at the time, called her husband T.Y., and B.K. and M.M., who came to the apartment to assist her. It is reported that when O.Y., B.K. and M.M. requested a search warrant from the police officers, the officers produced an order from a prosecutor but the document did not have an official stamp. Consequently O.Y., B.K. and M.M. objected to the search continuing and the police officers left the apartment. It is alleged that thirty minutes later a group of 30 men, who included police officers, entered the apartment and physically attacked O.Y. and his wife, as well as B. K. and M.M. As a result of the attack O.Y.'s wife, who was pregnant, lost consciousness and was taken to hospital. It is reported that the police officers confiscated office equipment from the apartment.

723. Furthermore, on 29 April 2006, A. F. and B. K. were arrested and detained in Gulistan, Syrdaryn region. It is reported that they are currently being held in the office of the Gulistan city police department but that no charges have been brought against them to date.

724. Grave concern is expressed that these events may be connected with the activities of the above mentioned people in defense of human rights. Further concern is expressed that the above events form part of a campaign of intimidation and harassment against human rights defenders in Uzbekistan.

#### **Follow-up urgent appeal**

725. By letter dated on 21 July 2006 the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government to bring its attention to the information regarding M.T., a female human rights activist, who was already subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on violence against women, its causes and consequences on 18 July 2005. According to the information received: On 7 July 2006, M.T. was transferred to the psychiatric department of the Tashkent women's prison. On 13 July 2006, her two lawyers went to visit her and reported that her physical condition had markedly deteriorated, one of her hands was bandaged and she uncharacteristically talked very slowly. When asked by one of her lawyers how her hand was damaged, she did not reply. She did say, however, that she has to take pills every day without being informed about what type of pills she is given. She is kept in a room with 16 drug users and persons with mental problems. On 14 July 2006, her lawyers sent a letter to the prison director to find out why M.T. was transferred to the psychiatric department, but they did not receive a reply. Grave concern is expressed regarding the conditions under which M.T. is surviving and it is feared that her treatment may be a direct result of her human rights activities.

#### **Response from the Government**

726. On 26 January 2006, the Government provided a response in Russian, which was still being translated at this time this report was finalized. The response will be reflected in the next Report on Communications Received and Sent.

#### **Response to an urgent appeal sent in 2005**

727. On 27 October 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning M.T., head of the Ut Yuraklar human rights organisation, an unregistered women's rights organisation, member of the Organisation for the Defense of Rights and Freedoms of Uzbek Journalists, the Human Rights Society of Uzbekistan (HRSU) and the Committee for Freedom of Speech and Expression. M.T. also a Nobel Peace Prize Laureate (part of the initiative "1000 Women for the Nobel Peace Prize") was the subject of a communication sent by the Special Rapporteur and the Special Representative of the Secretary-General on the situation of human rights defenders on 18 July 2005. According to the information received, on 7 October 2005, at approximately 11 p.m., M.T. was arrested at her home in the Ferghana Valley by a group of heavily armed police and Special Forces officers. The full details of the allegations submitted have been reflected in the Special Rapporteur's previous Report on Communications sent and received (E/CN.4/2006/61/Add.1).

728. On 18 April 2006 the Government responded and stated that on 6 March 2006 MT was convicted by the criminal court of Tashkent province under articles 165, para. 3 (a), 167, para. 3 (a), 168, para. 2 (b), 184, para. 2 (b), 189, para. 3, 197, 209, para. 1, 28, 209, para. 2 (a), 216, 228, para. 2 (b), 228, para. 3, 229 and 244-1, para. 3 (b), of the Criminal Code of Uzbekistan, and sentenced under articles 59 and 61 of the Criminal Code to eight years deprivation of liberty and stripped of the right to occupy managerial and financially responsible posts and to engage in business activity for a period of three years.

729. According to the court judgment, the Government stated, M.T. was convicted of various fraudulent activities in a commercial context.

730. The Government also stated that, in 2002, M.T. set up an illegal voluntary association called the "Ardent Hearts Club". She thereupon used funds received from abroad to organize unauthorized demonstrations in front of buildings housing local authorities and government bodies in Tashkent and Fergana provinces for the purpose of putting pressure on them and their representatives. During these demonstrations she disseminated information that she knew to be false, aimed at provoking panic and destabilization.

731. Furthermore, M.T. did not declare the financial assistance received for organizing the activities of the "Ardent Hearts Club" to the tax authorities and deliberately evaded payment of taxes and other charges to the value of 2,042,900 sum.

732. According to the Government the criminal prosecution of M.T. was not related to her human rights work. She was convicted for perpetrating specific criminal acts. This criminal case was currently being prepared for review by the court of appeal.

#### **Observations**

733. The Special Rapporteur thanks the Government for the responses to her letters dated 27 October 2005 and 21 July 2006. The Special Rapporteur regrets not having received a reply to her communications dated 4 April and 10 May 2006 and would like to reiterate her interest in receiving replies from the Government in regard to the allegations submitted.

### **Zimbabwe**

#### **Urgent Appeal**

734. By letter dated on 15 September 2006 the Special Rapporteur jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to the Government to bring to its attention the information regarding the on-going harassment of members of the NGO *Women of Zimbabwe Arise* (WOZA). WOZA is a grassroots organization working to promote and protect women's activism, whose members have already been the subject of previous communications by the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 16 February 2006, 20 May 2005, 29 September 2004 and 26 September 2003.

735. According to the information received: On 21 August 2006, over 200 activists from WOZA reportedly took the streets in the city of Bulawayo in order to protest over the introduction and implementation of the Monetary Policy by the Governor of the Reserve Bank. Among the concerns of the women's organisation were the arbitrary searches, confiscation and subsequent depositing of old bearer cheques with authorities from the Reserve Bank; furthermore, in terms of the regulations issued by the President and being implemented by the Reserve Bank Governor, there is reportedly no remedy before the courts to challenge a confiscation. In the open letter that WOZA members wanted to deliver to the Governor, they protested against the government's alleged solution to Zimbabwe's economic crisis, the so-called "Operation Sunrise".

736. At around 11.15 a.m., the activists reportedly began their procession along Main Street. They were then intercepted by the police at the corner of Leopold Takawira Avenue and Main Street. It is alleged that the police arrested 153 of the women, who were brought to five separate holding places and police cells, namely: Bulawayo Central, Saucitown Police Station, Mzilikazi, Queens Park, and Barbourfields Police. Later on that day, their lawyers managed to secure the release of 39 persons, on condition that they report to Bulawayo Central Police everyday until the date of the initial appearance in court.

737. During their arrest, E.K., one of WOZA activists, reportedly fell from the police truck and sustained a fractured arm. Besides, several juveniles complained of beatings while being interrogated by members of the Law and Order Section at Bulawayo Central before being released into the custody of their lawyers.

738. On 23 August 2006, the activists appeared in court and were charged for contravening section 37(1) (b) of the Criminal Law Codification and Reform Act, which provides that "any person acting together with one or more other persons present with him or her in any place or at any meeting performs any action, utters any words or distributes or displays any writing, sign or other visible representation that is obscene, threatening, abusive or insulting, intending thereby to provoke a breach of the peace or realising that there is a risk or possibility that a breach of the peace may be provoked shall be guilty of participating in a gathering with intent to promote public violence, a breach of the peace or bigotry, as the case may be, and be liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both". However, on the same day, all the WOZA activists were granted free bail and remanded out of custody. They are due to appear in Court on 10 October 2006.

739. Concern is expressed that these arrest, detention and conviction of WOZA members are linked to their activities in defense of human rights, in particular women's rights, and may form part of a campaign of harassment and intimidation against human rights defenders in Zimbabwe.

#### **Urgent appeal**

740. By letter dated 7 December 2006 the Special Rapporteur, jointly with Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders sent

an urgent appeal to the Government regarding the situation of members of Women of Zimbabwe Arise (WOZA) and Men of Zimbabwe Arise (MOZA). WOZA, and its subdivision MOZA, is a grassroots organization working to promote and protect women's activism, whose members have already been the subject of previous communications by the Special Representative of the Secretary-General on the situation of human rights defenders, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 15 September 2006, 16 February 2006, 28 June 2005, 20 May 2005, 29 September 2004 and 26 September 2003. On 31 August 2005, the Government of Zimbabwe replied to the communication of 28 June 2005, which had concerned events similar to those now reported to us. While we welcome that reply, it does not allay our concerns as explained below.

741. According to the allegations recently received: On 29 November 2006, more than 60 WOZA members and four MOZA members were arrested while demonstrating peacefully and marching through central Bulawayo to the Government offices at Mhlanhlandlela. The march, composed of 200 participants, was to mark the launch of the People's Charter and the "16 Days of Activism against Gender Violence", an international campaign running until International Human Rights Day on 10 December, as well as to protest against the Public Order Security Act (POSA).

742. A large group of riot police officers allegedly assaulted the group with baton sticks, forcefully dispersing most of it. Many people – including a baby – were beaten, and received medical care at Mpilo Hospital. 41 persons were reportedly taken to Drill Hall by police officers who subsequently beat them, before releasing them without charge on the same day. The other marchers, including WOZA leaders J.W. and M.M., were taken to Bulawayo Central Police Station, and 36 members, including six mothers with babies, spent the night there. On 30 November 2006, the six mothers with babies were released. As of 1 December 2006, 34 WOZA/MOZA members reportedly remained in police custody, beyond the 48-hours limit provided for by law.

743. The WOZA and MOZA members, including the six mothers released, were charged on 1 December 2006 under two separate sections of the Criminal Law (Codification and Reform) Act: Chapter 46 section 2 (v) – "employing any means whatsoever which are likely materially to interfere with the ordinary comfort, convenience, peace or quiet of the public, or does any act which is likely create a nuisance or obstruction" and Chapter 37 – "participating in a public gathering with the intent to cause public disorder, breach of peace or bigotry". If found guilty, the members could be fined or imprisoned for a period not exceeding six months or both.

744. A lawyer for WOZA was also threatened with arrest for "interfering with the course of justice" whilst trying to attend to her clients. She only managed to see the group on 30 November 2006, in the afternoon, several hours after being in police custody.

745. Serious concern is expressed that these new arrests of WOZA/MOZA members and the charges against them are in relation to their legitimate activities in defense of human rights, in particular the promotion and protection of women's rights. This concern is reinforced by the fact that this incident took place on the occasion of the first International Day on Women Human Rights Defenders celebrated every 29 November. Further concern is expressed that this new instance of repression against WOZA/MOZA members may form part of a campaign of harassment and intimidation against human rights defenders in Zimbabwe.

### **Response from the Government**

746. By letter dated 14 December 2006, the Government of Zimbabwe sent a reply to the urgent appeal from 7 December 2006. The Government provided the following information: On 29 November 2006, the Women of Zimbabwe Arise (WOZA) numbering more than forty (40) were dropped at the corner of Herbert Chitepo and 11th Avenue in Bulawayo by a white T35 lorry and a red combi. Both vehicles had no registration numbers but it was noted that a white man was driving the lorry while a black man was driving the combi.

747. Soon after, the women started singing, shouting, and waving placards and a big banner. They were also distributing fliers to passers by while marching towards Mhlahlandlela Government Complex. On arrival, their leader Jennifer Williams addressed them, urging them not to run away from the police. When police arrived to disperse the rowdy and illegal gathering, they managed to arrest forty and not forty-one members of WOZA. Among the arrested was their leader Jennifer Williams.

748. The members of WOZA were taken to Bulawayo Police Station where they were detained in Police Cells. They were all charged for contravening section 37 (1) (b) of the Criminal Codification Act Chapter 9:23 "Participating in gathering with intent to promote public violence, breach of peace or bigotry". It is therefore not true that they were released without any charges and that they were released on the same day. We have it on record that they were taken to court on the 1st of December 2006 where the Public Prosecutor declined to place them on remand, advising the police to proceed by way of summons.

749. None among those arrested was ever assaulted by the police and there is no record of any child having been among those who were arrested. If ever anyone was injured, it could be among those who ran away from the police and were never arrested. The police in this case are therefore not answerable for that which happened without their knowledge. We do not have any report of any complaint against the Police from any member of WOZA who had engaged in the illegal demonstration.

750. The group's lawyer, P.D. was allowed to see her clients and at no stage was she ever threatened. There is also no record to indicate that she ever made a complaint about the alleged threat.

751. It is important to note the contradiction in the issue raised in the document by OHCHR where at one stage it is indicated that the WOZA members were arrested and released on the same day without charge, and yet on another paragraph it is indicated that their lawyer visited them on the 30th of November while they were still in custody.

752. Conclusion by the Government: Women of Zimbabwe Arise led by J.W. have become a law unto them and have the propensity to engage in illegal demonstrations contrary to the laws of the land. The ZRP has reiterated that its main duty is to reinforce the laws of the country and this it does without fear or favour. If members of the WOZA turn these illegal demonstrations into regular rituals, they should do so fully cognisant of the fact that they will be courting the wrath of the law. None of Zimbabwe is above the law.

**Response from the Government to an allegation letter sent in 2005**

753. On 16 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning NM, Coordinator of the Women's Coalition, an umbrella body of women's rights groups in Zimbabwe. According to the information received, on 8 November 2005, NM was arrested and detained, allegedly for convening a meeting under the name of 'Women Peacemakers International'. The meeting was a workshop aimed at training women in the use of non-violent means as a tool for dispute resolution. On 10 November 2005, NM was charged with contravening section 24 (6) of the Public Order and Security Act (POSA), that is, organizing a political meeting without informing a regulatory authority. She was released on the same day but had been warned by the police that she would be summoned to appear in court once they had completed their investigations.

754. On 23 January 2006, the Government responded stating that the allegation letter did not contain enough particular information to enable the Government to respond meaningfully to the case. The Government was aware, however, that some sections of the community have vowed to defy the provisions of the Public Order and Security Act (POSA). The POSA requires that, save for certain exempted categories, all public gatherings, meetings or processions must be notified to the police four days in advance to enable the police to determine whether the gathering/processions requires protection or not. The Government further stated that persons not happy with a certain law can challenge it in the Constitutional Court (Supreme Court). That Court, however, had declared that the relevant POSA provision was reasonably necessary in a democratic society.

**Observations**

755. The Special Rapporteur thanks the Government of Zimbabwe for its response to her letter dated 16 November 2005 and 7 December 2006. Regarding the response of 14 December 2006, she would like to receive further information on why the women concerned were charged with "Participating in gathering with intent to promote public violence, breach of peace or bigotry" considering that, according to the Government's reply, they merely engaged in singing, shouting, waving placards and a big banner and the distribution of flyers.

756. The Special Rapporteur regrets not having received a reply to her communication dated 15 September 2005 and would like to reiterate her interest in receiving reply from the Government in regard to the allegation submitted.

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