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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**Report of the Special Rapporteur on the independence of judges and lawyers,
Leandro Despouy, submitted in accordance with
Commission on Human Rights resolution 2004/33**

Addendum

Situations in specific countries or territories*

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

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Introduction

1. The present report supplements the main report and the mission reports presented by the Special Rapporteur on the independence of judges and lawyers to the Commission on Human Rights. It includes:

(a) Summaries of the urgent appeals and allegation letters transmitted by the Special Rapporteur to governmental authorities between 1 January and 31 December 2004 and of the press releases issued during the same reporting period. In this connection, the Special Rapporteur wishes to emphasize that the urgent appeals and communications reflected in the report are based exclusively on information that has been transmitted to him directly. Where information was insufficient and it could not be supplemented and cross-checked, or where the information received was outside the mandate, the Special Rapporteur was not in a position to act;

(b) Summaries of all replies received from the States concerned by 31 December 2004 (including replies to cases acted upon by the Special Rapporteur in 2003 or earlier). In this connection, it may be noted that at the time of submitting this document the Special Rapporteur had received responses from the Governments of China, Columbia, Eritrea, the Russian Federation and the United Kingdom to urgent appeals or communications sent during the reporting period: The Special Rapporteur regrets that these replies were either not able to be translated in time or were received after 31 December 2004, and therefore will be reflected in next year's report to the Commission. Due to restrictions on the length of the report, the Special Rapporteur has been obliged to summarize the details of all correspondence sent and received. As a result, requests from Governments to publish their replies in their totality could regrettably not be accommodated;

(c) Wherever possible, observations or specific comments by the Special Rapporteur;

(d) In a limited number of cases, a note on recent important developments affecting the judiciary.

2. For the first time, the Special Rapporteur has included in this report two tables of statistical data for an overview of the extent and nature of the problems faced by the judiciary worldwide:

(a) Table 1 provides an overview of all actions taken by the current Special Rapporteur and his predecessor on specific situations and cases brought to their attention during the years 2003 and 2004, and of any replies received from the Government of the States concerned. It should be noted that on-site missions are not reflected in the table;

(b) Table 2 provides a tentative thematic overview of the types of problems faced by the judiciary in 2004 as reflected in the nature of the complaints brought to the Special Rapporteur's attention. In this connection, the Special Rapporteur wishes to emphasize that the categories presented are subject to further elaboration and analysis in future reports. He would thus welcome comments and suggestions.

3. It can be seen from table 1 that no fewer than 58 States were approached in one way or the other during the last two years, with 17 communications, 107 urgent appeals and 20 allegation letters sent to the authorities of the States concerned, and that 15 press releases were also issued.

4. In the year 2004, 38 States were directly approached by the Special Rapporteur who – in addition to performing on-site missions to Kazakhstan and Brazil – sent 3 communications to 3 States, 59 urgent appeals to 28 States and 18 allegation letters to 13 States, and issued 7 press releases regarding situations in 7 States. It will be noted that, as threats to the independence of the judiciary often go hand in hand with other human rights violations, for the sake of efficiency, most of these action were taken by the Special Rapporteur jointly with other colleagues.

5. Of the 58 States with which the Special Rapporteur was in contact during the last two years, 45 offered their active cooperation by providing a response, and of the 38 States specifically contacted in 2004, 28 sent a response, and while some replies address the concerns raised more comprehensively than others, the Special Rapporteur highly appreciates the responses as they are a positive indication of a Government's willingness to engage in a dialogue. The Special Rapporteur welcomes this attitude and encourages all other States concerned to also offer their cooperation.

6. To the Special Rapporteur's knowledge and concern, the independence and impartiality of the judiciary is being threatened in yet other countries and territories that are not mentioned in this report. It goes without saying that he closely monitors such situations and will, if appropriate, report on them in due time.

Table 1. Communications sent and received in 2003-2004

7. The statistics in table 1 are a compilation from this report (E/CN.4/2005/60/Add.1) and last year's report (E/CN.4/2004/60/Add.) for the period between 1 January 2003 to 31 December 2004 and reflect the communications, urgent appeals, allegation letters and press releases issued by the Special Rapporteur individually (ind.) or jointly (jt.) with other Special Procedures of the Commission on Human Rights and the replies received from the country concerned.

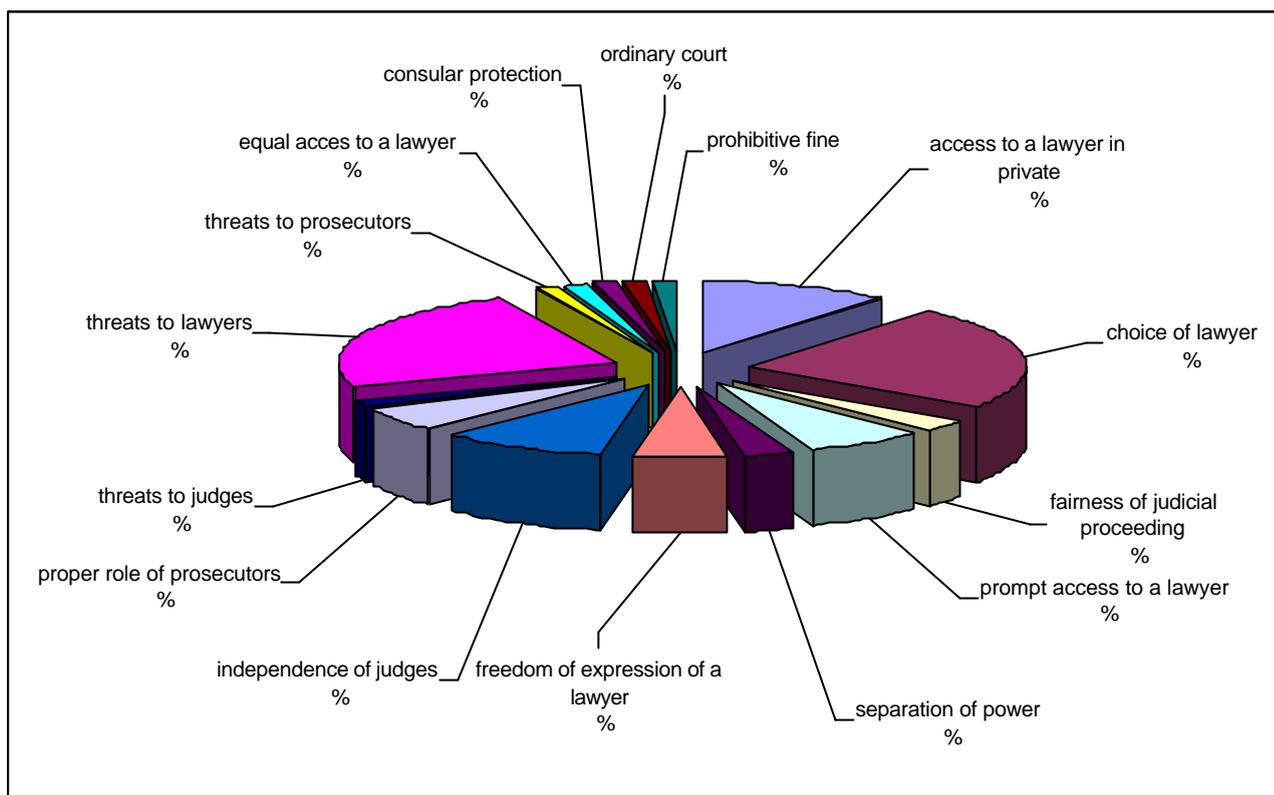
Communications to the Government

Résumé général					
États concernés	Communications	Appels urgents	Lettres d'allégations	Communiqués de presse	Réponses des États concernés
58 États : dont 38 États approchés en 2004	17 : dont 3 communications concernant 3 États en 2004	107 : dont 59 appels urgents concernant 28 États en 2004	20 : dont 18 lettres d'allégations concernant 13 États en 2004	15 : dont 7 communiqués concernant 7 États en 2004	103 réponses provenant de 45 États : dont 53 réponses de 28 États reçues en 2004

Information pays par pays					
États concernés	Communications	Appels urgents	Lettres d'allégations	Communiqués de presse	Réponses des États concernés (la date de la réponse figure sur la même ligne que celle de la démarche du RS)
1	Afghanistan	30/06/04 (jt.)	02/06/04 (jt.)		30/06/04
2	Afrique du Sud		17/02/04 (jt.)		06/05/04
3	Arabie saoudite		07/07/03 (ind.) 23/04/04 (jt.) 24/08/04 (ind.) 17/11/04 (ind.) 30/11/04 (jt.)		17/02/03 (sur rapport de mission) 30/10/03 12/08/04 30/09/04 ---
4	Argentine	24/07/03 (ind.)			31/12/03
5	Bahamas		19/10/04 (jt.)		25/10/04
6	Belarus				30/01/03
7	Bolivie		02/04/03 (jt.) 07/05/03 (jt.)		13/01/04 24/09/03
8	Brésil	17/04/03 (ind.)	09/02/04 (jt.)		01/11/04 (ind.) ---
9	Chine	09/01/03 (ind.) 24/02/03 (ind.)	19/03/04 (jt.) 08/06/04 (jt.) 22/09/04 (jt.) 15/10/04 (jt.) 25/10/04 (jt.) 01/12/04 (jt.)	27/08/04 (ind.) 19/10/04 (cjt)	14/04/04 (jt.) 31/12/04 31/12/04 31/12/04 --- (réponse qui figurera dans le prochain rapport)
10	Colombie		18/07/03 (ind.) 15/03/04 (jt.) 06/09/04 (jt.)	13/05/04 (jt.) 07/07/04 (jt.)	14/05/04 10/05/04 21/09/04 --- (réponse qui figurera dans le prochain rapport) 25/08/04
11	Côte d'Ivoire		26/07/04 (jt.)		---
12	Cuba		19/05/03 (jt.)		02/09/03
13	Egypte	10/04/03 (ind.)	09/04/03 (jt.) 02/10/03 (jt.) 08/04/04 (jt.)		22/04/03 --- 25/05/04 07/05/04
14	Equateur			28/12/04	---
15	Erythrée		11/11/04 (jt.)		--- (réponse qui figurera dans le prochain rapport)
16	États-Unis d'Amérique	30/06/04 (jt.)	16/01/03 (jt.) 11/07/03 (jt.) 19/12/03 (jt.) 29/04/04 (jt.) 14/05/04 (jt.)	02/07/04 (jt.) 22/11/04 (jt.)	12/03/03 (ind.) 07/07/03 (ind.) 25/06/04 (ind.) 09/11/04 03/09/04

Information pays par pays						
17	Fédération de Russie		04/05/04 (jt.) 03/11/04 (jt.)			--- --- (réponse qui figurera dans le prochain rapport)
18	Guatemala		16/04/03 (ind.) 01/07/03 (jt.) 17/07/03 (ind.) 20/01/04 (jt.)	18/11/04	08/07/03 (ind.) 17/07/03 (ind.)	28/06/04 & 13/08/03 10/12/03 --- --- 22/07/03 28/06/04 --- 09/08/04
19	Haïti		14/02/03 (jt.) 22/10/04 (jt.)			23/08/03 (accusé de réception) ---
20	Honduras			08/10/03 (cjt.)		19/12/03
21	Inde		24/07/03 (jt.)			---
22	Indonésie		10/04/03 (jt.) 23/06/03 (jt.) 09/07/03 (jt.) 03/12/04 (jt.)			--- --- 07/08/03 ---
23	Iraq	30/06/04 (jt.)				---
24	Iran (Rép. Islamique d')		05/12/03 (jt.) 24/01/03 (ind.) 12/03/03 (jt.) 29/09/03 (jt.) 11/03/04 (jt.) 30/04/04 (jt.) 16/11/04 (jt.)	20/02/04 (jt.) 11/03/04 (jt.)	27/07/04 (ind.)	18/05/04 24/12/03 --- --- --- --- ---
25	Israël		28/02/03 (jt.)			21/10/03 30/07/03 ---
26	Italie			15/12/04	17/12/04 (ind.)	16/12/04
27	Jamahirya arabe libyenne		22/09/04 (jt.)			---
28	Kazakhstan				21/06/04 (ind.)	---
29	Liban					10/02 & 09/09 & 27/12/03
30	Libéria		29/04/03 (jt.)			---
31	Malaisie		05/05/04 (jt.) 13/05/04 (jt.) 07/07/04 (jt.) 26/10/04 (jt.)			14/06/04 22/09/04 07/10/04 22/12/04
32	Malawi		26/06/03			---
33	Maldives		06/10/04 (jt.)			27/10/04
34	Mauritanie		18/07/03 (jt.)			28/08/03
35	Mexique		14/02/03 (jt.) 06/03/03 (jt.) 23/05/03 (jt.) 24/07/03 (jt.) 03/08/04 (jt.) 23/08/04 (jt.) 01/09/04 (jt.)			11/11/03 05/01/04 29/04 & 03/12/03 08/08/ & 10/11 & 24/11/03 02/09/04 04/11/04 ---
36	Népal		24/02/04 (jt.) 26/04/04 (jt.) 06/08/04 (jt.) 29/09/04 (jt.) 29/09/04 (jt.)		14/07/04 (jt.)	--- --- --- --- 23/12/04
37	Nicaragua					14/01/03
38	Ouganda		13/08/03 (jt.)			---
39	Ouzbékistan	11/06/03 (ind.) 23/04/03 (pour une mission)	11/06/03 (jt.) 04/06/03 (jt.)			--- 05/08/03 19/08/03

Information pays par pays						
40	Panama			28/07/04 (jt.)		20/07/04
41	Pérou		07/09/04 (jt.) 22/11/04 (jt.) 28/12/04 (jt.)			17/09/04 23/12/04 ---
42	Rép. arabe syrienne		26/06/03 (jt.) 16/07/03 (jt.) 15/07/04 (jt.) 06/08/04 (jt.)			15/09/03 22/05/03 01/11/04 20/09/04
43	Royaume-Uni de Grande-Bretagne et d'Irlande du Nord		06/08/04 (jt.) 29/09/04 (jt.)	12/02/04 (ind.)		09/02/04 11/03 & 03/05/04 14/10/04 --- (réponse qui figurera dans le prochain rapport)
44	Serbie-et-Montenegro	23/04/03 (ind.)				16/12/03
45	Soudan		14/05/03 (jt.) 03/07/03 (ind.) 03/07/03 (jt.) 08/07/03 (jt.) 05/02/04 (jt.) 02/04/04 (jt.) 04/04/04 (jt.) 15/04/04 (jt.) 03/08/04 (jt.) 01/12/04 (jt.)			03/07/03 27/10/03 29/01/04 --- 29/07 & 09/09/ & 22/10/03 --- 07/07/04 --- --- ---
46	Sri Lanka	04/04/03 (pour une mission)	07/02/03 (ind.)			03/01/03 ---
47	Swaziland			27/08/04 (ct.)	15/04/03 (ind.) 27/07/03 (ind.)	--- --- ---
48	Tadjikistan		11/06/03 (ct.)			---
49	Thaïlande		17/03/04 (ct.)			30/03 & 06/08/04
50	Tunisie		21/01/03 (ind.) 22/07/03 (ct.)			28/07/03 09/05/04
51	Turkménistan	09/01/03 (ind.) 06/01/03 (pour une mission)	28/01/03 (ind.)			12/02/03 12/02/03 ---
52	Turquie		19/12/03 (jt.) 06/08/04 (jt.)			09/02/04 20/01/04 14/10/04
53	Uruguay	14/04/03 (ind.)		26/02/03 (jt.)		14/05/03
54	Venezuela	18/10/03 (ind.)		12/02/04 (ind.) 25/11/04 (ind.)		19/03/04 & 14/07/04 18/02/04 ---
55	Viet Nam		08/01/03 (jt.)			13/03/03
56	Yémen	23/05/03 (ind.)		28/05/04 (jt.) 23/12/04 (jt.)		12/12/03 --- ---
57	Zimbabwe		17/10/03 (jt.)	12/02/04 (jt.)	19/02/03 (jt.) 03/07/03 (ind.)	--- --- 23/11/03 18/02/04
58	Autorité palestinienne		06/06/03 (jt.)			---

Table 2. Tentative statistics on thematic issues addressed in 2004

Choice of lawyer	24%
Threats to lawyers	24%
Access to a lawyer in private	11%
Independence of judges	10%
Prompt access to a lawyer	7%
Proper role of prosecutors	6%
Freedom of expression of a lawyer	6%
Fairness of judicial proceeding	3%
Separation of power	3%
Threats to judges	1%
Threats to prosecutors	1%
Equal access to a lawyer	1%
Consular protection	1%
Ordinary court	1%
Prohibitive fine	1%

Afghanistan

8. On 2 June 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding **Abdullah Shah**, a military commander from Paghman, who was reportedly executed, probably on 19 April 2004. Reports indicate that this was the first judicial execution to be carried out in Kabul since the fall of the Taliban. Reportedly, the proceedings at Abdullah Shah's trial fell short of international fair trial standards in several ways. He had reportedly no defence at his trial, which was heard in a "special court" that was not open to the general public. It is alleged that the chief judge at the initial trial was dismissed for accepting a bribe and that at the second trial the judge imposed the death penalty hastily, under pressure from the Supreme Court. Furthermore, although 23 written complaints reportedly formed the bulk of evidence against him, there was no chance for cross-examination. He reportedly claimed in court that he was forced to sign a confession and that he was tortured in detention, pointing to injuries from his legs, as well as other injuries. The Special Rapporteur on extrajudicial, summary or arbitrary executions observed the trial proceedings of Abdullah Shah while on mission to Afghanistan in October 2002. In her report to the Commission on Human Rights (E/CN.4/2003/3/Add.4) she expressed concerns that the domestic judicial system does not allow for the observance of the safeguards and restrictions relating to the imposition of capital punishment. As a result, she urged that the death penalty be suspended and that a moratorium on executions be implemented until such standards can be met. In 2003, the Commission on Human Rights called on the Afghanistan Transitional Administration to "declare a moratorium on the death penalty in the light of procedural and substantive flaws in the Afghan judicial system" (resolution 2003/77).

9. On 30 June 2004, a copy of a statement was sent to the Government, originally issued as a press release on 25 June 2004 entitled "Protection of human rights and fundamental freedoms in the context of anti-terrorism measures" (see para. 156 for the full text of the statement).

Communication from the Government

10. On 30 July 2004, the Government responded to Special Rapporteurs' joint urgent appeal sent on 2 June 2004. The Government provided a response from the Supreme Court, which confirmed that the execution of Abdullah Shah was the first execution that had taken place since the establishment of the Interim and Transitional Governments. The Court pointed out that capital punishment is applied in conformity with the Constitution and the applicable laws, and that whenever there is the slightest doubt about a particular case, the death penalty is replaced by a lighter punishment. In the present judicial system, there is a court for cases relating to political and organized crimes, and Abdullah Shah's case fell into this category. Therefore, no specific court was set up for his case. Also, the preliminary court proceedings were open to the public and journalists, and were broadcast by government TV and radio. Concerning the judge, he was dismissed not for bribery but for incompetence, and the new judge was not appointed specifically for Abdullah Shah's case. Concerning the allegations of lack of a fair trial, the investigation and prosecution were conducted by the Attorney-General's Office, which is independent, and the results were submitted to the court. The court's decision was not made hastily: it took 2½ months to review the case. The trial was fair and based on testimonies from 13 witnesses, and the proceedings were reviewed by three courts. There were no shortcomings that would justify

compensation to the family. The judiciary is independent at all levels and the Supreme Court does not interfere with any trials. Concerning the allegation of lack of access to a lawyer of his choice, Abdullah Shah was asked to choose his defence attorney but declined the offer. Concerning the allegations of torture, Abdullah Shah did not confess under torture and never complained about torture during his trial. He did not have legions. The Government advised that the accused was put to death by firing squad, which is considered to be the most humane method.

Bahamas

Communication to the Government

11. On 19 October 2004 the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture concerning the situation of **Rene Mendoza Banos** and **Jorge Luis Conde**, both Cuban asylum-seekers. On 1 October 2004, the two men were detained at the Carmichael Detention Centre, were severely beaten with batons by soldiers and subjected to a mock execution. On 10 October, several Cuban detainees, including children, were forced to stand against a fence inside the camp from 3 p.m. to 5.30 p.m., with no water, in temperatures of around 30 degrees Celsius. Many of the detainees have had no access to lawyers, or to the Office of the United Nations High Commissioner for Refugees (UNHCR).

Communication from the Government

12. On 25 October 2004 the Government responded to the Special Rapporteurs' joint urgent appeal of 19 October and advised that immediate investigations into the cases of Rene Mendoza Banos and Jorge Luis Conde had been undertaken and that the results would be transmitted as soon as possible. No further information was received by 31 December 2004.

Bolivia

Respuesta del Gobierno

13. Mediante comunicación del 13 de enero de 2004 el Gobierno proporcionó información adicional en relación a los llamamientos urgentes enviados el 2 de abril y el 7 de mayo de 2003, en relación con el abogado **Cliver Rocha** (E/CN.4/2004/60/Add.1, párr. 12-13). El Gobierno afirmó que la persecución de los hechos punibles que anteriormente había denunciado Cliver Rocha no prosperó debido al desistimiento del mismo, que abandonó el caso y no proporcionó mayores elementos que prueben los hechos denunciados, pese a los constantes requerimientos del fiscal para que Cliver Rocha presente su declaración informativa y aporte mayores elementos.

Brazil

Communication to the Government

14. On 9 February 2004 the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders in relation to the alleged killings of **Erastótenes de Almeida Gonçalves**, **Nelson José da Silva** and **João**

Batista Soares Lages, three lawyers from the Brazilian Ministry of Labour. On 28 January 2004 these three lawyers were allegedly shot in the head and killed as they were driving to the property of a landowner in the State of Minas Gerais while they were conducting a routine inspection. It is reported that the driver, **Aílton Pereira de Oliveira**, was found severely wounded and died later the same day at a hospital in Brasilia. There is concern that the three lawyers may have been killed in connection with their work defending workers rights in Brazil since they had previously been threatened as a consequence of their work advocating against and investigating conditions of slavery. The Special Rapporteurs requested that these killings be investigated thoroughly and fairly and those responsible brought to justice, and also that effective policies are in place to provide lawyers and human rights defenders with a safe and secure working environment.

Press release

15. On 1 November 2004, following the conclusion of his visit to Brazil, the Special Rapporteur issued a press release (see E.CN.4/2005/60/Add.3) in which he thanked the Government, especially the Special Secretary of Human Rights, and all the authorities and sectors that collaborated with him during the visit. He also thanked the non-governmental organizations (NGOs) and other representatives of civil society for the valuable information provided and the trust given to him. The Special Rapporteur visited Brasilia, Sao Paulo, Porto Alegre, Recife and Belem. He also met representatives of organizations and institutions of other States of the country, namely Ceará, Rio Grande do Norte, Paraíba, Maranhão, Roraima and Rondonia. He had over 60 meetings and interacted with some 500 people: governmental authorities at the federal, state and municipal levels; judges, prosecutors and lawyers, judicial and bar associations; public defenders; and a high number of representatives of civil society. He maintained constant contacts with the press throughout the visit. The Special Rapporteur made a number of preliminary observations:

(a) Lack of access to justice. Most people do not have access to justice because they are socially or economically excluded. Vulnerable groups or groups suffering discrimination are the most affected. He referred to children, adolescents, women, indigenous people, homosexuals, transsexuals, quilombolas, black people, sick people, and social movements like the workers without land and the environmentalists;

(b) The judicial system is extremely slow. The many guarantees foreseen by the system, which provides for several appeals, coupled with the excessive number of cases that get to the Federal Supreme Court, cause significant delays and can make judicial system ineffective;

(c) The situation is not consistent throughout Brazil. The quantity and length of proceedings are more significant, for example, in Sao Paulo, where there are some 13 millions ongoing cases and each judge has a workload of 8,000-10,000 cases. This problem is less severe in Rio Grande do Sul, where there is an advanced judicial system and a virtual process is being tried. In Pernambuco and Amazonas, the impact of violence on the justice system is tangible. Judges, lawyers, prosecutors and defenders are exposed to high risks of violence and threats, especially those involved in the rural and environmental questions or in the fight against organized crime. In many cities, the links between judges and the political and economic elites affect the independence of the judiciary and explain the high levels of impunity in these cities;

(d) A major concern is the situation of children and adolescents. In the North and

North-East, most sexual crimes against children and adolescents are not investigated and in some cases representatives of the judiciary are involved in those crimes.

16. The Special Rapporteur expressed a few preliminary considerations on some elements of the ongoing judicial reform, such as the binding opinion (*súmula vinculante*) and the opinion restricting the appeal (*súmula impeditiva de recurso*); the federalization of the most serious human rights violations; the establishment of the National Council of the Judiciary and the National Council of the Public Prosecutor's Office; the creation of specialized tribunals for the land question; the financial and functional autonomy of public defenders; and the investigative powers of prosecutors. He also mentioned some positive experiences he identified during the visit, such as the Integrated Centres of Citizenship in Sao Paulo; the public audits of the judiciary in Porto Alegre; and the Rights' Desk in Belem.

17. The Special Rapporteur ended the press briefing by indicating some preliminary recommendations:

(a) The approval of the law establishing the financial and functional autonomy of public defenders should be a priority. States that do not have public defenders (Sao Paulo, Goiás and Santa Catarina) should proceed to set up their system of public defenders;

(b) The judicial proceedings should be reformed with a view to simplifying the system while preserving all guarantees;

(c) International human rights law should be applied by judges, lawyers, defenders and prosecutors in judicial proceedings;

(d) More specialized tribunals should be created in at least two areas: crimes against children and adolescents; and the land question;

(e) International cooperation among the different actors of the judiciary, especially in the border areas, is essential to fight a transfrontier phenomenon like organized crime;

(f) Positive experiences at the federal and state levels should be collected and evaluated to study their feasibility in other areas of the country. A national meeting could be called upon to this end.

Chile

Observaciones del Relator Especial

18. El Relator Especial nota con satisfacción algunas decisiones recientes tomadas por las cortes chilenas a favor de la investigación de graves violaciones de los derechos humanos. En particular, la Corte Suprema ha decidido que el antiguo Presidente Augusto Pinochet debe ser juzgado por cargos de abusos contra los derechos humanos - nueve cargos por secuestro y uno por asesinato - confirmando así la decisión de la Corte de Apelaciones de Santiago. Augusto Pinochet será el primer ex jefe de Estado procesado en Chile por la comisión de abusos de derechos humanos cometidos, en este caso en el contexto de la "Operación Cóndor".

19. Por otro lado, el Relator Especial nota con preocupación la sucesiva decisión de la Corte Suprema de imponer un plazo máximo de seis meses para las investigaciones en casos de violaciones de derechos humanos cometidas durante el régimen de Augusto Pinochet. Esta decisión constituye una interferencia de la Corte Suprema en procesos de casos que están bajo la competencia de otros magistrados.

China

Communications to the Government

20. On 19 March 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning the situation of **Yang Jianli**, who was reportedly arrested on 26 April 2002, and for whom an urgent appeal was sent on behalf of the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 11 December 2002. According to more recent information received, Mr. Yang was tried on 4 August 2003. It is reported that the authorities had four months from that date to issue a ruling, in accordance with provisions of the Criminal Code, but as of that date they had failed to pass sentence. It is further reported that Yang Jianli, who was not allowed to have access to his lawyer during the first 14 months of his detention, asked to be allowed to speak to his lawyer without prison guards and security agents recording their conversation, and to be allowed to write letters. Yang Jianli was editor-in-chief of the online review "Yibao" (www.chinaeweekly.com). He was arrested when returning to China to investigate workers' strikes in the country's north-east, after his expulsion from the country for taking part in Tiananmen Square demonstrations in 1989. He was arrested for "failing to have a valid passport", and was charged on 17 July 2003 with "illegal entry into Chinese territory" and "spying for Taiwan". However, it is believed that Mr. Yang's critical stance vis-à-vis the authorities, in particular on the review "Yibao", might be the reason for his detention.

21. On 8 June 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning reports that, on 18 May 2004, the trial of **Du Daobin** for "incitement to subversion" before the Intermediate Peoples' Court in the city of Xiaogan, Hubei province, which commenced in the absence of Du Daobin's lawyer. Mr. Du's lawyer, who was notified four days before the trial, could not travel to attend the trial and Mr. Du was appointed a lawyer, who refused to enter a not-guilty plea, despite the wishes of his client. It is further reported that the trial was held behind closed doors. Previous urgent appeals were sent on behalf of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 7 November 2003 and by the Special Rapporteur on the right to freedom of opinion and expression on 3 December 2003, as Mr. Du had previously been denied the services of his lawyer when, on 3 November 2003, his counsel reportedly had his licence withdrawn by his own law firm, preventing him from defending his client.

22. On 27 August 2004, the Special Rapporteur sent an allegation letter concerning the situation of **Wei Jun**, an attorney from the Baicheng law firm in Baise city, Guangxi province, who had allegedly been threatened and harassed for defending **Liang Changying**, a Falun Gong practitioner. Ms. Liang was sentenced to 5 ½ years in prison. After the court adjourned, the public prosecutor allegedly asked about the existence of a regulation stating that lawyers cannot defend Falun Gong practitioners who plead "not guilty". The same day Mr. Wei's home phone, cell phone and office phone were put under surveillance, and several days later police officers asked the Judiciary Bureau to suspend Mr. Wei's licence to practice law and to sentence him to three years of forced labour. After the director of the Judiciary Bureau refused their request, the

police reportedly warned Mr. Wei that in the future he would not be allowed to defend Falun Gong practitioners, and confiscated all of his materials regarding Ms. Liang's case.

23. On 22 September 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the situation of **two Nepalese citizens** who were reportedly sentenced to death by a Chinese court in a trial alleged to have fallen short of international fair trial standards. Fears were expressed that the two men, whose names remain unknown, were at risk of imminent execution. The men were reportedly sentenced to death by a court in the Tibet Autonomous Region of China, on charges relating to smuggling arms into Nepal. During their trial, it is believed that they neither had access to legal representation nor to an interpreter. Reportedly, the Government of Nepal announced the sentences on 17 September 2004 and appealed to the Government of China to retry the case and to provide the defendants with legal representation.

24. On 15 October 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women, its causes and consequences, to express their concern at reports of systemic repression against the **Falun Gong** and other “heretical organizations” (“*xiejiao zuzhi*”). Over the past five years, hundreds of cases of alleged violations of the human rights of Falun Gong practitioners have been brought to the attention of the Special Rapporteurs. Many of these allegations have been reported back to the Chinese authorities and are reflected in reports of the Special Rapporteurs to the Commission on Human Rights. The Special Rapporteurs are concerned that reports of arrest, detention, ill-treatment, torture, denial of adequate medical treatment, sexual violence, deaths, and unfair trial of members of so-called “heretical organizations”, in particular Falun Gong practitioners, are increasing. They expressed concern that these allegations may reflect a deliberate and institutionalized policy of the authorities to target specific groups such as the Falun Gong. An analysis of reports indicates that the alleged human rights violations against Falun Gong practitioners, including systematic arrest and detention, are part of a pattern of repression against members of this group. Most of those arrested are reportedly heavily fined and released, but many are detained and ill-treated in order to force them to formally renounce Falun Gong. Those who refuse are sent to re-education through labour camps, where torture is reportedly used routinely and in many cases has resulted in death. When charges are laid they reportedly include allegations such as “disturbing social order”, “assembling to disrupt public order”, “stealing or leaking State secrets”, or “using a heretical organization to undermine the law”. According to the information received, those prosecuted have been unfairly tried and many have received lengthy prison sentences. In this respect it is reported that on 5 November 1999, a notice issued by the Supreme People’s Court instructed all local courts to do their “political duty” in bringing to trial and punishing “severely” those charged with “heretical organization crimes”, “particularly Falun Gong”, and to handle these cases “under the leadership of the Party committees”.

25. On 19 October 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture concerning **Tenzin Deleg**

Rinpoche, a Buddhist religious leader who was at imminent risk of execution, following a conviction based on a confession obtained under torture. It is reported that he was arrested on 7 April 2002 following a bombing incident in Chengdu, Sichuan province, on 3 April 2002. He was found guilty on 29 November 2002 in a secret trial by the Kardze (Ganzi) Intermediate People's Court in the Kardze Tibetan Autonomous Prefecture, Sichuan province, for "causing explosions" and "inciting separatism". On 2 December 2002 he was sentenced to death with a two-year suspension of execution, which will expire on 2 December 2004. Tenzin Deleg Rinpoche was reportedly held incommunicado for eight months from the time of his arrest until the time of his trial. He was reportedly tortured in detention, including by being shackled hand and foot and suspended from above, and forced to confess. His conviction was upheld on 26 January 2003 by the Sichuan High People's Court, and he was moved to a secret location afterwards.

26. On 25 October 2004, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture concerning the situation of **Chan Yu Lam**, a British citizen and a resident of Hong Kong who was tried for espionage in a trial closed to his family by the Guangzhou Intermediate People's Court on 24 February 2004. He was convicted based on a confession extracted under torture, and on 5 March 2004, he was sentenced to life imprisonment. Chan Yu Lam was denied access to British consular officials during his detention and trial, and his lawyers were threatened not to meet him by State Security officials. Mr. Lam was abducted in Shenzhen on 31 January 2003 by persons who identified themselves as members of the Debt Collection Group of the Guangdong Province Public Security Bureau, but were reportedly members of the Guangzhou State Security Bureau. In June 2003, the Guangdong Province Foreign Affairs Office informed the British Consulate General in Guangzhou that Chan Yu Lam had been arrested for an unspecified economic crime. Then in December 2003 his family received a letter from him informing them that he had been arrested for espionage and that they should retain lawyers for him. Therefore, since his arrest until 13 December 2003, at which time he was first visited by his lawyers, Chan Yu Lam was held incommunicado.

27. On 1 December 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding **Zheng Enchong**, a Shanghai lawyer involved in the defence of economic and social rights of displaced persons, who was sentenced on 28 October 2003, Zheng Enchong has been imprisoned and denied access to his lawyer, which reportedly resulted in his not being able to file an appeal application against his sentence before the Shanghai Supreme People's Court. His wife reportedly filed an application on his behalf, but the Court has not acknowledged it. Furthermore, the director of the Shanghai's Judicial Bureau and Prisons Bureau, Miao Xiaobao, reportedly visited Zheng Enchong in Shanghai's Tilanqiao Prison on several occasions, telling him that if he admitted wrongdoing, his three-year sentence would be reduced by one year. However, Zheng Enchong refused to do so. Concern was expressed that the denial of Mr. Zheng's right to see a lawyer and the right to appeal his sentence may be intended to prevent him from resuming his work as a lawyer who defends persons displaced from their homes by real estate projects. Such concerns are reinforced by the alleged attempts to induce Zheng Enchong to repudiate his legal work in defence of human rights, both by offering a reduction of his sentence and by aggravating the conditions of his detention.

Communications from the Government

28. On 5 July 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 19 March 2004 and advised that Mr. Yang Jianli was sentenced on 13 May 2004 and received five years' imprisonment for the crime of espionage and six months' imprisonment for illegally crossing State borders and a fine. The Government stated that the judicial authorities acted in accordance with internal law and international human rights instruments as Mr. Yang's legal rights were guaranteed during detention (he met with his lawyer 17 times from the investigative to the sentencing stage) and he was sentenced in accordance with articles 110 and 322 of the Criminal Law. The sentence was a result of illegal activities involving threats to State security and had nothing to do with freedom of expression or opinion as the Government ensures these freedoms under article 35 of the Constitution, but citizens must assume their corresponding duties under the law.

29. On 31 December 2004, the Government sent replies to the Special Rapporteurs' joint urgent appeals sent on 15, 19 and 25 October 2004. The replies unfortunately could not be translated in time to be included in this report but will be reflected in next year's report.

Press release

30. On 14 April 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to freedom of opinion and expression, and the Special Representative of the Secretary-General on human rights defenders issued the following press release:

“UNITED NATIONS HUMAN RIGHTS EXPERTS EXPRESS CONCERN OVER THE SITUATION OF TIBETAN MONK

“We are deeply concerned over the continued detention under a suspended death sentence of Tenzin Deleg Rinpoche, a prominent Lama who was involved in social work in favour of the Tibetan community in the Kardze Tibetan Autonomous Prefecture of the Sichuan Province and who promoted the reestablishment of Tibetan Buddhism in the region.

“Tenzin Deleg Rinpoche was sentenced on 2 December 2002, after he was accused of ‘causing explosions’ and ‘inciting the separation of the State’, charges he denied. His co-accused, Lobsang Dondrup, was executed on 26 January 2003. Numerous and credible reports have referred to serious procedural flaws during the closed trial, in particular violation of the right to a public trial, violation of the right to choose his own lawyer and denial of the right to know and have the opportunity to examine the evidence presented against him in court, and to ill-treatment of the accused during the pre-trial period, including incommunicado detention for the whole pre-trial period and ill-treatment during interrogations.

“We are concerned that Tenzin Deleg might be executed any time until the end of the suspension of his death sentence. We are also concerned that his death sentence will be commuted in a life sentence after 2 December 2004, following a trial which apparently fell short of international norms and standards. Therefore, we urge the authorities to grant

Tenzin Deleg Rinpoche a new trial in accordance with international norms and standards of due process.”

Observations of the Special Rapporteur

31. The Special Rapporteur welcomes the commutation of the death sentence passed against Tenzin Deleg Rinpoche to life imprisonment, while reiterating his concern that the conviction resulted from a trial that did not meet international fair trial standards.

Colombia

Comunicaciones enviadas al Gobierno

32. El 15 de marzo de 2004, el Relator Especial, junto con el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, envió un llamamiento urgente relativo a la situación de **Rodolfo Ríos Lozano**, abogado especialista en derechos humanos que representa a Luz Perly Córdoba, Presidente de la Asociación Campesina de Arauca (ACA), cuyo caso fue objeto también de un llamamiento urgente enviado conjuntamente el 27 de febrero de 2004 por la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, la Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión. Según la información recibida, el 24 de febrero de 2004, después de la indagatoria de Luz Perly Córdoba, Rodolfo Ríos Lozano habría recibido dos llamadas telefónicas anónimas. En la primera llamada el autor le habría acusado de ser un “perro terrorista de las FARC, abogado defensor de narcoterroristas”, y en la otra, dos horas más tarde, se le dijo que debería escoger entre abandonar el país, dejar los casos en los que estaba trabajando o morir. Además, se informa que Rodolfo Ríos Lozano habría sido sometido a vigilancia y que le habrían seguido unos hombres no identificados, todo ello presuntamente relacionado con su trabajo como abogado de defensores de los derechos humanos.

33. El 13 de mayo de 2004, el Relator Especial, junto con el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió una carta de alegación en relación con la situación del abogado **Carlos Bernal**. El Relator Especial recibió información según la cual Carlos Bernal, miembro del Comité Permanente para la Defensa de los Derechos Humanos y del Frente Social y Político, habría sido asesinado el 1º de abril de 2004 en la ciudad de Cúcuta por una persona no identificada, que le disparó varias veces en la cabeza cuando se encontraba en un establecimiento de venta de comida. Otra persona no identificada habría disparado a la cabeza de su guardaespaldas Camilo Jiménez, quien falleció horas más tarde. En el momento de su muerte Carlos Bernal era beneficiario del Programa de Protección del Ministerio del Interior y de Justicia.

34. El 7 de julio de 2004, el Relator Especial, junto con el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, envió una carta de alegación en relación con la situación del abogado **Pedro Julio Mahecha Ávila**. De acuerdo con las informaciones recibidas, el 14 de mayo de 2004, Pedro Julio Mahecha Ávila, abogado y miembro de la Corporación Colectivo de Abogados “José Alvear Restrepo”, habría

sufrido actos de hostigamiento por parte del Departamento Administrativo de Seguridad (DAS). El abogado habría sido hostigado y seguido en la ciudad de Cartagena por personas que se habrían identificado como funcionarios del DAS. La misma tarde, el abogado habría denunciado el supuesto hostigamiento ante la Policía. Sin embargo, el hostigamiento habría continuado y el abogado habría abandonado la ciudad de Cartagena y cancelado un viaje a la ciudad de Barranquilla donde se había comprometido a dirigir un programa auspiciado por la Unión Europea. Los informes indican que funcionarios del DAS habrían dispuesto un operativo en la ciudad de Cartagena con el fin de demostrar que Pedro Julio Mahecha Ávila era guerrillero de las FARC. Este supuesto hostigamiento del Pedro Julio Mahecha Ávila podría ser relacionado con su trabajo como abogado y defensor de los derechos humanos.

35. El 6 de septiembre de 2004, el Relator Especial, junto con el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, envió un llamamiento urgente en relación a la situación de **Diana Teresa Sierra Gómez**, abogada y defensora de derechos humanos, e integrante de la Corporación Colectivo de Abogados "José Alvear Restrepo". De acuerdo con la información recibida, el 2 de septiembre de 2004 la Sra. Sierra Gómez tendría que haber viajado a Holanda para participar en la Asamblea de Estados Partes de la Corte Penal Internacional. Ese mismo día, la Corporación Colectivo de Abogados "José Alvear Restrepo" habría sido informada que el DAS estaba organizando un operativo contra la señora Sierra Gómez en el aeropuerto El Dorado de la ciudad de Bogotá. Por ese motivo, su viaje fue cancelado. Asimismo, el 24 de octubre de 2003 habría sido fotografiada y filmada junto con otro miembro del Colectivo de Abogados "José Alvear Restrepo" en las inmediaciones de las oficinas de esta organización por un hombre y una mujer desconocidos. Posteriormente, el día 28 de junio de 2004, habría sido fotografiada a la entrada de la sala de espera del aeropuerto de la ciudad de Armenia (Quindío) por un sujeto no identificado. A la luz de estas alegaciones, se expresaron temores por la seguridad e integridad física y psicológica de Diana Teresa Sierra Gómez.

Respuestas del Gobierno

36. Mediante comunicación del 10 de mayo de 2004, el Gobierno proporcionó información en relación al llamamiento urgente enviado el 15 de marzo de 2004. El Gobierno informó que el Sr. Rodolfo Ríos Lozano hace parte del Programa Especial de Protección Integral para dirigentes y miembros sobrevivientes de la Unión Patriótica y del Partido Comunista Colombiano, prosiguiendo a detallar que el esquema de protección del que goza Rodolfo Ríos Lozano consiste en un vehículo corriente, dos escoltas, un celular, un radio avantel y tiquetes aéreos nacionales para cuando lo soliciten. Adicionalmente, el 18 de mayo se habría aprobado el cambio del vehículo corriente en un vehículo blindado. Paralelamente, el Gobierno anunció la apertura de una investigación por parte del Fiscal 240 de la Unidad de Delitos contra la Libertad Individual, Otras Garantías y Otros, bajo el radicado No. 749224. El Gobierno también se comprometió a seguir el resultado de las investigaciones y a informar el Relator Especial al respecto.

37. Mediante comunicación del 14 de mayo de 2004, el Gobierno proporcionó información con respecto al llamamiento urgente enviado por el Relator Especial el 18 de julio de 2003 en relación con el abogado José Ramiro Orejuela Aguilar. El Gobierno informó que el Sr. Orejuela Aguilar fue beneficiario de medidas cautelares por la Comisión Interamericana de Derechos Humanos entre el 2 de junio de 2003 y el 29 de julio de 2003, cuando el Sr. Orejuela Aguilar habría decidido salir del país, lo que habría hecho días después. El Gobierno informó también

que la investigación abierta se encontraría en etapa previa de práctica de pruebas, sin que hasta la fecha se haya logrado esclarecer los hechos ni identificado a los partícipes en el delito. En cuanto a las investigaciones relacionadas con el asesinato del abogado Absalón Achury, la fiscalía local de San Juan de Aratama habría remitido las diligencias a la fiscalía delegada ante el Guala de Villavicencio, el 9 de junio de 2003, para que se unificaran dentro del radicado 92517 que adelanta dicha delegada por el delito de secuestro.

38. Mediante comunicación de 21 de septiembre de 2004, el Gobierno proporcionó información en relación al llamamiento urgente enviado el 13 de mayo de 2004 en relación con el asesinato del abogado Carlos Bernal. El Gobierno detalló información relativa al esquema de protección con el que contaba el Sr. Bernal, las circunstancias en las que se produjo su asesinato y las medidas judiciales adoptadas. En cuanto al esquema de protección, el Sr. Bernal contaba con un esquema individual consistente en dos escoltas y una camioneta, distintos medios de comunicación y billetes aéreos nacionales. En lo que se refiere a las circunstancias de su muerte, el día 1º de abril de 2004 varios desconocidos dispararon de forma indiscriminada contra el Sr. Bernal y su escolta Camilo Jiménez Arenas, ocasionando la muerte de forma instantánea al primero y pocas horas después al segundo. Simultáneamente a dichos asesinatos fueron accionados dos artefactos explosivos de baja potencia que no causaron víctimas ni daños materiales de relevancia: presuntamente dichas explosiones habrían estado dirigidas a distraer la atención de las fuerzas de seguridad y facilitar así la huida de los asesinos. Esta última acción habría sido ejecutada por grupos de autodefensa urbanos GRAU que delinquen en la ciudad, y uno de los responsables habría sido capturado. La policía habría recogido algunos testimonios y las investigaciones sobre este caso continuarían.

39. El Gobierno proporcionó información con respecto al llamamiento urgente enviado por el Relator Especial el 6 de septiembre de 2004. Todavía como en este informe figuran solo las comunicaciones recibidas hasta al 31 de diciembre de 2004, un resumen de la respuesta figurará en el informe que el Relator Especial presentará a la próxima sesión de la Comisión.

Côte d'Ivoire

Communication envoyée

40. Le 26 juillet 2004, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé un appel urgent sur la situation du journaliste franco-canadien **Guy-André Kieffer**, disparu le 25 juillet 2004 à Abidjan et au sujet duquel le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression avait envoyé une communication aux autorités ivoiriennes le 22 avril 2004. Selon les informations communiquées, Patrick Ramaël, le juge d'instruction français qui enquête sur cette affaire, se serait plaint auprès de son homologue ivoirien, Koffi Kouadio, des obstacles au bon déroulement de cette enquête que semblent ériger certaines autorités. Il est ainsi rapporté qu'il n'a pas pu interroger deux militaires cités par Michel Légré, beau-frère de Mme Simone Gbagbo et dernière personne à avoir vu Guy-André Kieffer avant sa disparition. Il semblerait que la hiérarchie militaire ait évoqué le fait qu'elle ne pouvait pas les localiser pour expliquer la non comparution des deux militaires. De plus, Anselme Seka Yapo, responsable de la sécurité de Mme Gbagbo et Bertin Gahié Kadet, conseiller à la présidence chargé des affaires de défense, auraient refusé de se soumettre aux convocations du magistrat. Le juge Ramaël aurait indiqué qu'il souhaitait se rendre une troisième fois en Côte d'Ivoire au début

du mois de septembre. Il est également allégué que Michel Legré aurait mis en cause le Ministre de l'économie et des finances qui lui aurait personnellement remis une enveloppe contenant un million de francs CFA quelques heures après l'enlèvement du journaliste. Les Rapporteurs spéciaux ont également été informés du fait que l'ordinateur et le téléphone portable du journaliste auraient été consultés après sa disparition, ce qui semble conforter la thèse selon laquelle le journaliste a bien été enlevé pour ses activités professionnelles.

Observations du Rapporteur spécial

41. Le Rapporteur spécial regrette de n'avoir pas, à ce jour, reçu de réponse à son appel urgent du 26 juillet 2004.

Cuba

Observaciones del Relator Especial en relación con alegaciones reflejadas en el documento E/CN.4/2004/60/Add.1

42. En relación con el llamamiento urgente enviado el 19 de mayo de 2003 (E.CN.4/2004/60/Add.1, párr. 21) acerca de las 78 personas que han sido arrestadas y condenadas por su oposición a las políticas del Gobierno después de haber sido procesadas en juicios sumarios y a puerta cerrada en abril de 2003, el Relator Especial nota con satisfacción que, según las informaciones recibidas, 14 de ellas han sido liberadas, entre ellas, los periodistas Carmelo Díaz Fernández, Oscar Espinosa Chepe, Raúl Rivero, Edel José García y Jorge Olivera Castillo. Sin embargo, el Relator Especial queda muy preocupado por la situación de las demás personas que quedan detenidas e insta al Gobierno de Cuba a liberarlos cuanto antes.

Ecuador

Comunicación enviada al Gobierno

43. El 28 de diciembre de 2004, el Relator Especial envió una carta de alegación señalando su preocupación con relación a la decisión del Congreso ecuatoriano de sustituir la mayoría de los **jueces de la Corte Suprema**. El Relator Especial ha sido informado que, el 8 de diciembre de 2004, el Presidente de la República convocó al Congreso en período extraordinario, para "analizar y resolver sobre la situación jurídica y constitucional de la Función Judicial en Ecuador", y que el Congreso resolvió sustituir 27 de los 31 magistrados de la Corte Suprema por otros jueces elegidos por el mismo Congreso. Aunque este acto del poder ejecutivo está previsto por la Constitución Política de Ecuador (art. 171, numeral 8), también la Constitución prevé que el Congreso debe sesionar sobre puntos específicos y no generales como en este caso. El otro aspecto observado refiere que el poder legislativo habría realizado una interpretación inadecuada de una cláusula constitucional transitoria, mediante la cual decidió declarar en funciones prorrogadas a algunos magistrados y nombrar "a la plancha" (en lista general sin ternas) a nuevos funcionarios. Sin embargo, el artículo 202 de la Constitución del país establece que "Los magistrados de la Corte Suprema de Justicia no estarán sujetos a período fijo en relación con la duración de sus cargos. Cesarán en sus funciones por las causales determinadas en la Constitución y la ley. Producida una vacante, el pleno de la Corte Suprema de Justicia designará al nuevo magistrado, con el voto de las dos terceras partes de sus integrantes...". A la luz de la información que dispone el Relator Especial, esta decisión constituiría una interferencia de los

poderes ejecutivo y legislativo en el poder judicial, al ser violatoria del principio de constitucional de “independencia judicial” (art. 199 de la Constitución), requisito esencial del estado de derecho y de la democracia garantizado por instrumentos internacionales de los cuales Ecuador es parte. En este contexto, el Relator Especial ha reiterado su profunda preocupación por la decisión tomada por el Congreso y solicitado la cooperación del Gobierno para aclarar la situación. También, ha invitado al Gobierno a garantizar los mecanismos judiciales pertinentes que posibiliten revisar la constitucionalidad de esta decisión, y a tomar todas las medidas necesarias para asegurar y fortalecer la independencia del sistema judicial en Ecuador, en conformidad con las normas nacionales e internacionales sobre la independencia de los jueces.

Egypt

Communication to the Government

44. On 8 April 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health and the Working Group on Arbitrary Detention concerning the situation of **Ahmed Hussein Mustafa Kamil Agiza**. He was reportedly sentenced by a military court, in absentia, to 25 years in prison and forcibly returned to Egypt by the Government of Sweden on 18 December 2001. Since that date, Ahmed Agiza has reportedly only met with his lawyer, Hafez Abu Saeda, once in over two years. On 3 April 2004, it was reportedly announced that a new military trial was scheduled for 10 April and Ahmed Agiza has allegedly not been permitted to consult with his lawyer. There is concern that Ahmed Agiza's due process rights may be denied as he is not being tried by an ordinary civil court.

Communications from the Government

45. On 7 May 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 8 April 2004. The Government advised that the sentence imposed on Ahmed Hussein Mustafa Kamil Agiza is currently being reviewed in the light of the decision of His Excellency the President of the Republic to accept the petition filed by Mr. Agiza. The Government stated that since his incarceration Mr. Agiza has received visits from members of the Swedish diplomatic and consular services (21), his family (53) and his lawyers (4). Furthermore, according to the Government, Mr. Agiza is receiving continuous medical treatment and has been given medical examinations at the Manil University Hospital (38 times). He has also undergone medical tests and has had 14 sessions of medical therapy at the Liman Turrah Hospital. The Government advises that Mr. Agiza persists in flouting prison rules and regulations. According to the Government, there is no evidence to support the allegations in the complaint that this person has been tortured.

46. On 25 May 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 2 October 2003, and advised that Mr. Ashraf Ibarhim had been acquitted by the ruling of the court 6 March 2004.

Eritrea

Communication to the Government

47. On 11 November 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning large scale round-ups in Asmara of Eritrean men between 18 and 40 years of age on 4 and 5 November 2004 by the Eritrean Defence Force (EDF). More than 50,000 men were arrested over this period in the streets, their schools, workplaces and homes in a harsh, systematic manner and without search warrants. It is reported that the round-ups were connected with the Eritrean National Service Policy. Eyewitnesses reported that all those who did not comply with orders were publicly beaten. On the night of 4 November in Adi Abeto military camp, 4 km outside Asmara, a riot between detainees and prison guards broke out sparked by the lack of food. Some detainees attempted to escape over a wall, which subsequently collapsed. Shooting followed and at least 25 people were killed, including five guards, and about 100 people were injured. According to Eritrean National Service Proclamation No. 82/1995, all Eritrean citizens between 18 and 40 years old are required to perform 18 months' military and national service. However, following the conflict with Ethiopia, this obligation continues to be prolonged indefinitely. The Government has reportedly called up United Nations national staff members for service, in contravention of section 18 (c) of the 1946 Convention on Privileges and Immunities of the United Nations. Since the beginning of 2004 more than 50 staff members of the United Nations Mission in Ethiopia and Eritrea (UNMEE) have reportedly been arrested and detained, of whom 4 are still unaccounted for. In an incident reported in recent months, about 30 national staff of UNMEE were arrested while returning home on an UNMEE bus. Some of these persons were immediately sent to the military camp in Sawa. The prisoners have no access either to their families or to lawyers.

Communication from the Government

48. The Government sent a reply to the Special Rapporteurs' joint urgent appeal of 11 November 2004, too late to be reflected in this year's report.

Guatemala

Comunicaciones enviadas al Gobierno

49. El 20 de enero de 2004, el Relator Especial, junto con el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, el Relator Especial del Secretario General sobre la venta de niños, la prostitución de niños y la utilización de niños en la pornografía infantil, y el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, envió un llamamiento urgente relativo al caso de **Bruce Harris**, Director Ejecutivo de los Programas para América Latina de Casa Alianza. Según la información recibida, tras una conferencia de prensa celebrada en septiembre de 1997 en la cual la Oficina del Procurador General y Casa Alianza expusieron los resultados de una investigación conjunta sobre el tráfico ilegal de niños en Guatemala y en particular casos de adopciones ilegales, Bruce Harris habría sido acusado de difamación. Durante la conferencia, Bruce Harris habría declarado que personas cercanas a ciertas autoridades gubernamentales

estarían implicadas en dichas adopciones. La denuncia contra Bruce Harris habría sido presentada por una abogada conocida por su labor en casos de adopción de niños al extranjero y un pariente del entonces Presidente del Corte Suprema. En febrero de 1999, la Corte Constitucional habría tomado la decisión que, en casos como el presente, el derecho a la libertad de expresión sólo podía aplicarse a periodistas y que, por no ser periodista, Bruce Harris podía ser llevado ante los tribunales penales. En este contexto, Bruce Harris podría ser condenado a cinco años de encarcelamiento.

50. El 18 de noviembre de 2004, el Relator Especial envió una carta de alegación relativa a la magistrado **Yolanda Pérez Ruíz**, integrante hasta fechas muy recientes de la Corte de Apelaciones. De acuerdo con dichas informaciones, la magistrado Pérez Ruíz no habría sido reelegida en la nueva composición de la Corte de Apelaciones por motivos de índole política. La información recibida indicaría que, con una sólida reputación de independencia y una trayectoria en la que destaca el enjuiciamiento de destacados miembros de la vida política guatemalteca, tras 21 años en la carrera judicial, el magistrado Pérez Ruíz habría sido apartada de la misma particularmente por las decisiones adoptadas en su último mandato. Así, en los últimos cuatro años, y entre otros destacados casos, el magistrado tuvo ocasión de ratificar el arresto domiciliario del general y ex presidente guatemalteco Efraín Ríos-Montt, y se negó a otorgar la libertad bajo fianza del ex vicepresidente Juan Francisco Reyes López. Si bien, el partido político más afectado por las decisiones del magistrado ha sido el FRG, las fuentes indicarían que ha sido su desempeño independiente como magistrado lo que ha motivado la decisión política de no renovar su integración a la Corte de Apelaciones.

Respuestas del Gobierno

51. Mediante comunicación de 28 de junio de 2004, el Gobierno proporcionó información en relación al llamamiento urgente enviado el 20 de enero de 2004. El Gobierno informó que el 30 de enero de 2004 el Tribunal Duodécimo de Sentencia Penal dictó sentencia absolutoria en el proceso que se sigue contra Bruce Harris. Posteriormente esta sentencia ha sido apelada por la abogada Susana Luarca de Umaña, apelación cuyo fallo está pendiente. Por otro lado, el Estado de Guatemala manifestó que no se habían agotado todos los recursos y remedios de la jurisdicción interna, que se trataba de un asunto contencioso entre particulares y para los efectos correspondientes el Estado había proveído el proceso penal y la estructura respectiva, instancia donde se estaba dirimiendo la controversia.

52. Mediante comunicación del 9 de agosto de 2004, el Gobierno de Guatemala proporcionó información acerca de su decisión de organizar la “Unidad Coordinadora de Protección para Defensores de Derechos Humanos, Administradores y Operadores de Justicia, Periodistas y Comunicadores Sociales” que se propone fortalecer la capacidad de protección y seguridad para las personas dedicadas a esas actividades que sean o puedan ser víctimas de violaciones a los derechos humanos. La nueva unidad tiene como fin coordinar con las instituciones encargadas de garantizar la seguridad, y el efectivo cumplimiento de medidas dictadas por los órganos y mecanismos internacionales de protección de los derechos humanos a favor de las víctimas o potenciales víctimas de tales violaciones.

Observaciones del Relator Especial

53. En relación con el llamamiento urgente enviado el 1 de julio de 2003, el Relator Especial nota con satisfacción que, según las informaciones recibidas, la Sra. Thelma de Lam, fiscal de derechos humanos, ha dejado de recibir amenazas.

Haití

Communication envoyée au Gouvernement

54. Le 22 octobre 2004, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, 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 sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de **Rénan Hédouville**, avocat et Secrétaire général du Comité des avocats pour le respect des libertés individuelles (CARLI), et de **Mario Joseph**, avocat travaillant pour le Bureau des avocats internationaux. Rénan Hédouville et Mario Joseph travailleraient à la défense de personnes dont les droits fondamentaux auraient été violés par l'armée haïtienne entre 1991 et 1994, et notamment en faveur des familles des victimes du massacre de Raboteau en avril 1994. En août 2004, le CARLI aurait notamment protesté contre l'acquittement d'officiels de l'armée qui auraient été impliqués dans le meurtre en septembre 1993 d'Antoine Izméry. Mario Joseph représenterait par ailleurs des personnes liées au parti de l'ex-Président Aristide, Famille Lavalas, qui auraient récemment été emprisonnés sans charge. D'après les informations reçues, Rénan Hédouville et Mario Joseph auraient reçu par téléphone des menaces de mort anonymes s'ils ne cessent leurs activités de défense des droits de l'homme et s'ils persistent à accuser d'anciens officiers de l'armée. Selon les informations reçues, M. Hédouville aurait à plusieurs reprises fait part aux autorités des menaces dont il ferait l'objet. Malgré cela, celui-ci n'aurait bénéficié d'aucune protection. Toujours selon les informations reçues, d'autres membres du CARLI, parmi lesquels Marie Nadia Charles, directrice exécutive, et Morisseau Jean Rony, avocat, ainsi que Carline Séide, qui avait reçu l'aide de l'organisation, seraient contraints de vivre dans la clandestinité en raison du harcèlement dont ils feraient l'objet.

Observations du Rapporteur spécial

55. Le Rapporteur spécial regrette de n'avoir pas reçu de réponse à son appel urgent du 22 octobre. En outre, il exprime sa vive préoccupation au sujet des informations qu'il a reçues selon lesquelles le pouvoir judiciaire en Haïti serait fortement politisé et ferait l'objet d'interférences de la part du pouvoir exécutif. Plusieurs magistrats auraient dénoncé de telles pressions, et certains d'entre eux auraient été révoqués ou se seraient vus dans l'obligation de s'exiler ou de se cacher à cause de leur refus de céder à ces pressions. En février 2004, le système judiciaire aurait été gravement touché par des actes de violence et des pillages perpétrés dans les tribunaux du pays. Le Rapporteur spécial est préoccupé par l'insuffisance de mesures qui auraient été prises pour reconstruire l'appareil judiciaire ainsi que pour poursuivre les responsables de ces actes.

India

Observations of the Special Rapporteur

56. The Special Rapporteur welcomes the 14 April 2004 Supreme Court ruling which overturned the High Court's verdict in the Best Bakery case, in which 21 Hindus had been acquitted for burning 14 Muslims to death after fearful witnesses later recanted earlier allegations. The case has now been transferred to a more neutral venue. The ruling was also significant because it directed the state governments of Gujarat and Maharashtra to create an effective witness protection programme, ordered the appointment a new public prosecutor and called for impartial investigations into who is responsible for the 2002 Gujarat riots.

Indonesia

Communication to the Government

57. On 3 December 2004, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary General on the situation of human rights defenders concerning **Mr. Munir**, a human rights lawyer, Mrs. Suciwati, his wife, and relatives of Mr. Munir living in Malang, East Java. As a lawyer, Mr. Munir represented numerous alleged human rights victims, and he also co-founded the Commission for Disappeared Persons and Victims of Violence (Kontras), a group that has allegedly exposed the abduction by the military of several human rights activists in Jakarta. On 7 September 2004, Mr. Munir died in a Garuda flight from Singapore, two hours before arriving in Amsterdam. Mr. Munir was allegedly on his way to the Netherlands to take part in a course on international human rights law at the University of Utrecht. The Netherlands Forensic Institute performed an autopsy on Mr. Munir's body, and on 11 November 2004 the Government of the Netherlands handed over a copy of the forensic report to the Indonesian Foreign Ministry. The report indicated that Mr. Munir had died from excessive levels of arsenic in his body, in particular in his stomach, and that the concentration and location of the arsenic indicates that it had been slipped into the food or drink he had consumed. The Indonesian police had reportedly started an investigation into Mr. Munir's death. As of 20 November 2004, Mr. Munir's family had not received a copy of the report from the Indonesian Government and on that same day Mrs. Suciwati received a death threat after she demanded, together with relatives of Mr. Munir, an impartial and thorough investigation into Mr. Munir's death. It is also reported that, on 9 September 2004, a letter was received by relatives of Mr. Munir in Malang, East Java. The letter allegedly "congratulated" them on his death, and stated that Mr. Munir was a traitor. There is concern that the death of Mr. Munir may be a result of his activities to defend human rights, in particular through his work as a lawyer and in connection with his activities for Kontras.

Iran (Islamic Republic of)

Communications to the Government

58. On 20 February 2004 the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, expressing great concern regarding **Ensafali Hedayat**, a freelance journalist charged with breaching national

security interests due to his coverage of events, as an accredited journalist, of a conference in Berlin in January 2004 that was sponsored by an organization which supported a non-violent approach to establishing a new pluralistic and democratic system of government in Iran.

Mr. Hedayat's month-long detention was extended for a further 10 days on 16 February 2004, by order of the Ministry of Intelligence. While Mr. Hedayat had access to legal counsel on at least three occasions since his arrest on 17 January, his lawyer was apparently not permitted to be present during the interrogation sessions. There was also a concern that the prosecutor will have the dual role of also being the judge during Mr. Hedayat's trial and that the trial, scheduled to be held in the Public and Revolutionary Court, may contravene the international standards for fair trial, including the provisions set out in article 14 (1) of the International Covenant on Civil and Political Rights.

59. On 11 March 2004 the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, expressing great concern regarding the situation of **Iraj Jamshidi**, editor-in-chief of the suspended financial daily *Asia*, who was arrested on 6 July. Mr. Jamshidi's trial opened on 24 February 2004 before the Tehran Revolutionary Tribunal's 26th Division, and it is reported that, although his lawyer is allowed to attend the trial, he had no access to his client's file.

60. On 30 April 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and with the Special Rapporteur on violence against women, its causes and its consequences regarding **Kobra Rahmanpour** who was reportedly at risk of imminent execution by hanging. She had been detained in Evin Prison in Tehran for 3½ years, 20 months of which were said to have been spent on death row. Ms. Rahmanpour was arrested in November 2000, detained and interrogated without access to a lawyer, and subsequently convicted of "intentional murder" of her mother-in-law based solely on a confession obtained in the absence of legal counsel. It is further reported that the judge was also the investigator and had approved the charges as the prosecution service was allegedly suspended at the time. There is a concern that the trial, which was closed to the public after the first hearing, did not comply with internationally recognized standards of due process and fair trial. The Head of the Judiciary in Iran has the power to revoke her conviction; however, it is alleged that the judicial authorities have confirmed that all legal proceedings concerning Kobra Rahmanpour's case are completed and that the sentence can only be commuted if the victim's heirs forgo their right to retribution and seek instead payment of blood money (*diyeh*) instead. It was reported that after a warrant for the execution of Kobra Rahmanpour failed to be carried out on 1 January 2004, due to technical errors, the Head of Judiciary agreed to a temporary reprieve of her execution, granting her a short time to appeal to the victim's heirs. However, reports indicate that the heirs contacted the judicial authorities on 12 and 13 April 2004, to again insist on Ms. Rahmanpour's execution.

61. On 26 July 2004 the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and with the Special Rapporteur on the question of torture expressing great concern regarding the brief trial of **Mohammad Reza Aghdam Ahmadi** which ended abruptly on 18 July 2004. Mr. Ahmadi was charged with the "semi-intentional" murder of Zahra Kazemi, a journalist who died in a Tehran jail in July 2003, after she was reportedly beaten and subjected to other forms of ill-treatment while in custody. Allegedly, the trial did not meet international standards of fair trial as lawyers involved in the case claimed that key evidence was either ignored or covered up,

including documents and testimony by witnesses that may have disclosed incriminating evidence against judicial officials, the prosecutor's office and the intelligence ministry. Of further concern, journalists and other trial observers such as foreign diplomats, who were initially told they could attend the entire trial, were barred from access to the courtroom. In addition, Tehran prosecutor Saeed Mortazavi is said to have pressured some journalists not to report on parts of the trial. The prosecutor was quoted as saying to a journalist, "It's in your interest to consider the murder trial over and avoid publishing things that you should not."

62. On 16 November 2004, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and its consequences regarding the situation of **Mahboobeh Abbasgholizadeh**, a women's rights activist, editor of *Farzaneh* (a journal for women's studies) and director of an NGO training centre. Ms. Abbasgholizadeh was arrested at her home on 1 November 2004 on the order of the Prosecutor General of Iran and reportedly detained and held incommunicado and denied access to a lawyer or family members. To date, no formal charges have reportedly been brought against her but she was interrogated about her presentations at international meetings, including her address to the Asia Pacific Women's Watch Beijing+10 NGO Forum in July 2004, and her contacts with international women's rights activists.

Communications from the Government

63. On 18 May 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 5 December 2003 (E/CN.4/2004/60/Add.1, para. 46). The Government advised that **Nasser Zarafshan** had been sentenced to five years' imprisonment for illegal possession of weapons and disclosure of classified information. Mr. Zarafshan is serving his term in Evin prison where he meets with his family and attorneys on a regular basis.

64. On 15 December the Government replied to the Special Rapporteurs' joint urgent appeal of 26 July 2004 and advised that Zahra Kazemi's case was assigned to the Tehran Public Court, branch 1158, for consideration by the Tehran Office of the Public Prosecutor. The first session was public and the accused, her legal counsel, a representative of the public prosecutor, the media, the Canadian Ambassador to Iran and a number of diplomats from other countries were present. The hearing was suspended at the request of the accused legal counsel for further preparatory measures. The next session of the trial was convened in the presence of four legal representatives for Ms. Kazemi's family, the accused and her counsel, the Canadian Ambassador and two diplomats from the British and Dutch Embassies, and domestic and international media. Both sides presented their case in a hearing that lasted 15 hours and the court issued an initial verdict. The verdict was appealed by the victim's counsel and the case continues.

65. On 20 December the Government replied to the Special Rapporteurs' joint urgent appeal of 16 November 2004 and advised that Mahboobeh Abbasgholizadeh had been detained for her activities against the State and inspiring immoral acts in society, and is now released on bail.

Press release

66. On 27 July 2004, the Special Rapporteur, jointly with other Special Rapporteurs, issued the following press release:

**“UN EXPERTS APPEAL TO IRAN TO COMPLY WITH HUMAN RIGHTS NORMS
IN CASE OF DEAD JOURNALIST**

”The Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, and the Special Rapporteur on torture, Theo van Boven, express their profound concern regarding the unanswered questions which have resulted from the acquittal of an Iranian intelligence officer on 24 July after a two-day trial for the alleged killing of journalist Zahra Kazemi.

”Ms. Kazemi was arrested on 23 June 2003 while performing her work as a journalist outside Evin prison in the Iranian capital, Tehran. She was reportedly beaten and subjected to other forms of ill-treatment in detention; she died of her injuries on 10 July 2003.

”Many reports indicate that the proceedings did not meet international standards of a fair trial because key evidence that might have incriminated judiciary officials, the prosecutor's office as well as the intelligence ministry was ignored by the court. The independent experts are also concerned that journalists and other foreign observers were barred from full access to the courtroom after the start of the trial.

”The independent experts fear that by failing to ensure an open trial and the independent functioning of the judiciary -- which should take into account all findings that could shed light on this case -- the authorities are favouring a climate of impunity for law enforcement officials and setting the ground for the recurrence of similar human rights violations in the future.

”The experts underline the need for prompt and impartial investigations whenever acts and practices of torture are alleged. They appeal to the authorities to comply strictly with international human rights norms, and in particular with article 2, paragraph 3, of the International Covenant on Civil and Political Rights ratified by the Islamic Republic of Iran, which provides that, ‘Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and (c) To ensure that the competent authorities shall enforce such remedies when granted’.

Iraq

Communication to the Government

67. On 30 June 2004, a copy of a statement was sent to the Government, originally issued as a press release on 25 June 2004 entitled ‘Protection of human rights and fundamental freedoms in the context of anti-terrorism measures’ (see paragraph 156 for the full text of the statement).

Italy

Communications to the Government

68. On 15 December 2004, the Special Rapporteur sent an allegation letter to the President of Italy, Carlo Azeglio Ciampi, expressing his deep concern about the **judicial reform** which has recently been approved by the Italian Parliament and was before the President for ratification. The reform in question not only fails to address, but even runs against, the recommendations made by the former Special Rapporteur, Dato' Param Kumaraswamy, following his visits to Italy in March and November 2002. Further to insistent and reiterated requests by most sectors of the Italian judiciary and constitutional lawyers, the Special Rapporteur felt bound to express his serious apprehension about the negative impact that these reforms may have on the independence of the judiciary in Italy. The Special Rapporteur indicated some of his specific concerns regarding these reforms:

(a) The role of the Minister of Justice in the nomination of the Chief Prosecutor, who will now have the power to assign cases to and withdraw them from deputy prosecutors, which will have the effect of reducing the autonomy of deputy prosecutors and pave the way for possible government interference;

(b) The weakening of the role and powers of the Higher Council of the Judiciary (CSM), the independent body in charge of administering and controlling the judiciary, represents a significant limitation to the guarantees of independence that, for over a decade, have been considered to be key features of the Italian judiciary and have conferred upon Italy an enviable international prestige and moral authority, and served as a model to other countries;

(c) Whereas qualification and merit are crucial to the judicial career, the way in which exams are to be reintroduced may lead to a situation in which judges and prosecutors may be bound to pass exams throughout their professional career in order to be promoted or change their professional position. The need for judges to spend a considerable amount of their time preparing for these exams may eventually result in further delays of an already serious judicial backlog. In addition, the CSM will lose part of its competence over the promotion of magistrates, as guaranteed by the Constitution, and the risk exists that the exams may be used as a means of unduly interfering with magistrates' careers;

(d) The powers newly attributed to the Executive over the Judiciary, especially the role of the Minister of Justice in disciplinary proceedings, are in conflict with the principle of independence of the judiciary and, in the future, are likely to result in undue Executive interference in the disciplinary process and decisions affecting judges.

69. In the reports on his missions to Italy (E/CN.4/2002/72/Add.3 and E/CN.4/2003/65/Add.4), the former Special Rapporteur noted that there was reasonable cause for the magistrates to feel that their independence was being threatened, and he rightly recommended that all actors in the administration of justice, in particular the National

Association of Judges (ANM) and the CSM, should be consulted and invited to collectively address the needed reforms. One of his findings was that the administration of justice in Italy is plagued by cumbersome and lengthy procedures resulting in undue delays in the disposal of both civil and criminal cases. He also expressed regret that, ever since the early 1990s, when Italian magistrates began investigating corrupt practices among public officials and prosecuted several politicians, the tension between the executive and magistrates has steadily increased to the detriment of the due administration of justice. The Special Rapporteur expressed concern that instead of aiming at reducing this tension, which had already led to a number of magistrates' strikes in the past two years, the reforms will only further aggravated the crisis, resulting in another strike by both judges and lawyers in November 2004. A reason for this may be that the above concerns and the views of magistrates' associations were broadly disregarded. The Special Rapporteur urged the President to consider refraining from ratifying the proposed reform and to relaunch the process, allowing for deliberation through further dialogue and consultation with all sectors concerned, including experts in constitutional law, for a judicial reform that is consistent with international norms and principles of an independent judiciary and preserves Italy's reputation of high judicial standards.

Observations of the Special Rapporteur

70. The Special Rapporteur welcomed the announcement made by the President of Italy on 16 December 2004 that he had vetoed the judicial reform bill on the grounds that it was unconstitutional. The bill, which attempted to redefine the role of magistrates, was returned to Parliament.

Press release

71. On 17 December 2004, the Special Rapporteur issued a press release on the same issue dealt with in his letter to the President of Italy dated 15 December 2004.

Kazakhstan

Press release

72. On 21 June 2004, following the conclusion of his visit to Kazakhstan, the Special Rapporteur issued the following press release (see E.CN.4/2005/60/Add.2):

“UNITED NATIONS EXPERT WELCOMES KAZAKHSTAN’S OPENNESS TO FURTHER REFORMS

“The Special Rapporteur thanked the Government of Kazakhstan for their warm welcome and for the opportunity to meet with every person he had requested to meet with. He also expressed gratitude to the various local organizations of judges and lawyers with whom he met for the important insight they provided. He further thanked the numerous international organizations and local non-governmental organizations (NGOs) who met with him and the cooperation they extended. ‘All these organizations play an important role in the protection of human rights and have provided me with valuable information for my report’, stated Mr. Despouy.

”The Special Rapporteur indicated he now had ‘a more comprehensive picture of the country and the issues related to my mandate’, in as much as was possible after a seven-day visit. He then made a number of preliminary observations:

”1. Kazakhstan has made considerable progress in economic reforms and he noted that all actors in the country appeared to be aware of the importance of furthering institutional reforms, in particular judicial reforms, that were needed to match the economic achievements;

”2. All his interlocutors showed how conscious they were of the importance of having professional judges and wanted to increase the quality of judicial training; and

”3. All three key parties in the courtroom, the judge, the prosecutor and the lawyer, spoke about the difficulties they each encounter and were very open about the shortcomings of the legal system and proposed a number of changes to ensure a more transparent and effective judiciary in the very near future.

”The Special Rapporteur ended the press briefing by saying, ‘My overall impression is that the judicial and legal community are very aware of the progress that has already been made and they are also very aware of the necessity for further reforms in the near future’.

”The Special Rapporteur began his mission in Almaty where he had meetings with United Nation agencies including the United Nations Development Programme (UNDP), the Office of the High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Fund for Women (UNIFEM), the United Nations Children's Fund (UNICEF), the Organization for the Security and Cooperation for Europe (OSCE), the European Union, the United States Agency for International Development (USAID), the American Bar Association Central European and Eurasian Law Initiative and other national and international NGOs and academics. Then the Special Rapporteur travelled to Astana where he met with the Ministers of Foreign Affairs, Justice and the Interior, and the Deputy Minister of Education. He also had extensive consultations with the President of the Supreme Court, the President of the Constitutional Council, the Deputy Prosecutor General, the Ombudsmen, the National Commission on Family Issues, the National Commission on Human Rights and a number of other judges and lawyers.”

Lebanon

Communication from the Government

73. On 24 December 2003 the Government of Lebanon responded to the urgent appeal sent by the former Special Rapporteur on 27 December 2002 (E/CN.4/2003/65/Add.1, para. 96) concerning the attempt to kill Judge **Fadi Nashar**. The Government sent the final judgement in which the court ruled against the perpetrator, sentencing him to a term of 18 years in prison at hard labour. (Note: this reply was reflected in this report as it had not been translated in time to be included in last year's report).

Libyan Arab Jamahiriya

Communication to the Government

74. On 22 September 2004, the Special Rapporteur, together with the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an urgent appeal regarding **Fathi al-Jahmi**, his wife **Fawzia ‘Abdullah Gogha**, and their eldest son, **Muhammad Fathi al-Jahmi**. They were taken from their home in Tripoli by the authorities on 26 March 2004 and their arrest was allegedly linked to several media interviews given by Fathi al-Jahmi, including to the United States-based Arabic television channel al-Hurrah and to the Dubai-based Arabic channel al-‘Arabiya, in which he called for reform within Libya. It was reported that the authorities claimed that Fathi al-Jahmi was being held for his own protection because of alleged public outrage generated by his media interviews. During their arrest and detention Fathi al-Jahmi, his wife and eldest son were denied access to the outside world, including to lawyers, relatives and doctors. Fathi al-Jahmi was previously arrested in 2002 following a statement he made at a session of the Basic People’s Congress in al-Manshia, Bin Ashour, Tripoli, on 19 October 2002. At the Congress, he was reported to have stated that reform within Libya would never take place without legal and political change such as the introduction of a constitution, pluralism and democracy. On 10 March 2004 his case was heard before the People’s Court of Appeal and he reportedly received a suspended sentence of one year’s imprisonment. According to the information received, he was released on 12 March 2004, before being arrested again on 26 March 2004.

Malaysia

Communications to the Government

75. On 5 May 2004 the Special Rapporteur sent a joint urgent appeal 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 the human rights defenders regarding the arrest of **P.Uthayakumar**, a human rights lawyer, and of several other people, in particular **Jayathas, Ganesan, Dhayalan, Raju, Batumalai, Kanthan, Devarass, Letchumanan, Nambirajan, Antonyamma**, during a demonstration against the alleged death in police custody of a suspect in a theft case. On 30 April 2004, a group of 20 people gathered outside the Brickfield police station in Kuala Lumpur to protest against police brutality, and in particular the alleged death in custody of Francis Udayapan, and to demand to see his body. Riot police were reportedly waiting outside the police station and while the mother of Francis Udayapan went inside to lodge a report regarding the death of her son, police with batons reportedly broke up the demonstration and arrested 11 of the protestors including the above-named persons. They were allegedly released on bail shortly afterwards and were required to report to the police on 15 May. Concern was expressed that P. Uthayakumar and other demonstrators may have been targeted for their human rights activities, in particular their condemnation of the death of suspects in police custody.

76. On 13 May 2004 the Special Rapporteur sent another joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the situation of P. Uthayakumar. Mr. Uthayakumar, who was representing the family of Francis Udayapan, reportedly received numerous threatening phone calls related to his work and on 8 May 2004, his brother, Wanytha Moorthy, reportedly received a call on his mobile phone from an anonymous caller who stated that his brother should "not fool around with the police" and that if he did not heed this warning he would be killed. On 11 May 2004 Mr. Uthayakumar was driving along Jalan Medang in Bangsar when the windscreen and the window on the driver's side were smashed with a sledgehammer by someone in a car driving alongside. The driver then pointed a gun at Mr. Uthayakumar, upon which he jumped out of the passenger door and managed to escape. He reportedly suffered injuries to his face, hands, legs and back during the incident. Immediately after the alleged attack he filed a complaint at Brickfields police station. Mr. Uthayakumar has filed a number of reports with the police about threatening calls that he had received in the past but to date, no action by the police had been taken.

77. On 7 July 2004 the Special Rapporteur sent a another joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance regarding P. Uthayakumar. On 20 May 2004, he was assaulted at gunpoint by persons believed to be members of police. He sought temporary asylum in the United Kingdom, and returned to Malaysia on 13 June 2004, with the assurances of the Government of Malaysia that his safety would be guaranteed. Since his return, Mr. Uthayakumar's office has been repeatedly visited by the police in response to which Mr. Uthayakumar has lodged a complaint. The officer in charge of the Police District of Brickfields then lodged a police report against Mr. Uthayakumar for criminal defamation of the police. On 29 June 2004, Mr. Uthayakumar found in his letter box an envelope containing a live bullet in a plastic casing and a note containing a death threat written on tracing paper using letters from newspaper cuttings.

78. On 26 October 2004 the Special Rapporteur, together with the Special Rapporteur on the question of torture, sent a joint urgent appeal concerning the continued harassment of P. Uthayakumar thought to be linked to his work as a lawyer representing a number of clients from the Indian minority in Malaysia. In a letter dated 21 June 2004, the Director General of Income Tax informed Mr. Uthayakumar that he was not allowed to leave Malaysia, since he allegedly owed income tax. On 16 July he paid the amount owed and subsequently sent three letters asking for a certificate of release that would enable him to travel abroad again, which he had not yet received. On 9 September 2004, Mr. Uthayakumar was arrested at his law firm in Kuala Lumpur and brought to Brickfields police station. He was required to provide a statement in relation to the proceedings opened against him on charges of defaming the police (see above). He was released four hours later.

Communications from the Government

79. On 14 June 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 5 May 2004, advising that on 29 April 2004 between 30 and 40 men and women had gathered

outside Brickfields District Police Headquarters, carrying placards as well as a replica of a coffin. Members of the group made speeches calling for the District Police Chief to be suspended from his duties. Police officers warned the group to disperse since a demonstration without legal permit was considered an illegal assembly. After having given three orders to disperse, the police officers moved in to arrest those members of the group who had refused. Eleven men and one woman were arrested and nine posters, three photographs of an Indian man and the replica of the coffin were confiscated. Those arrested were released on bail the next day.

80. On 7 October 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 7 July 2004 and advised that P. Uthayakumar had lodged a police report on 27 April 2004 claiming that the Brickfields police personnel had vandalized his car because of a legal case he was working on. He requested around-the-clock police protection as he believed in was in grave danger. An investigation was launched but no fingerprints were found on the car other than Mr. Uthayakumar's and he refused to make any statement under section 112 of the Criminal Procedure Code and no further evidence was found. The investigation was referred to the Office of the Public Prosecutor and the Deputy Prosecutor closed the case as there were no suspects. Mr. Uthayakumar filed another report on 10 May 2004 concerning an incident in which he was beaten up by a group of men and again he alleged that the police were behind the attack. An investigation was initiated but hampered because Mr. Uthayakumar again refused to make a statement. On 17 June 2004 Mr. Uthayakumar was subpoenaed, pursuant to section 112 of the Criminal Procedure Ordinance, in order to record his statement but Mr. Uthayakumar failed to attend the police station. On 27 August 2004 the Kuala Lumpur Magistrates Court issued a warrant to ensure Mr. Uthayakumar's compliance and he was picked up on 9 September, his statement taken and released that same day. The Government stated that Mr. Uthayakumar's rights were not violated and the allegations of police involvement against Mr. Uthayakumar for his legal work against certain members of the police were thoroughly investigated. The Government said it examined very seriously cases involving abuse of power or crimes committed by police personnel. In 2003 alone, 41 members of the police force were charged and a further 78 policemen were either suspended or dismissed from the force as a result of investigations.

81. On 22 December 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 26 October 2004 and stated that the Government failed to see how the execution of a warrant, issued by the country's independent judiciary, for Mr. P. Uthayakumar's failure to respond to a subpoena can be construed as a violation of his basic human rights. Further, Mr. Uthayakumar's travel remains restricted since he has only paid part of the amount owed to the Inland Revenue Board. This was a routine procedure, applicable to all taxpayers and in accordance with subsection 104(1) of the Malaysian Immigration Department's Suspected List. For Mr. Uthayakumar to travel overseas again he will need to submit a release letter to the Immigration Department from the Inland Revenue Board that he has paid the arrears in full.

Observations of the Special Rapporteur

82. The Special Rapporteur thanks the Government for its responses on the case of Mr. P. Uthayakumar.

83. The Special Rapporteur welcomes the decision of Malaysia's highest court, the Federal Court, to overturn the sodomy conviction of former Deputy Prime Minister **Anwar Ibrahim**

(E.CN.4/2003/65/Add.1, paras. 104-112) in a trial that was marred by serious due process violations; the ruling also highlighted the issue of police abuse to elicit confessions. However, the Special Rapporteur continues to be concerned about numerous ongoing cases that were initiated under the Internal Security Act, under which Mr. Ibrahim was originally detained, as detainees can be held for years without charge or trial.

Maldives

Communication to the Government

84. On 6 October 2004 the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on violence against women, its causes and its consequences, and Special Representative of the Secretary-General on the situation of human rights defenders concerning **Ismail Asif** and **Jennifer Latheef**, employees of a television station who had been working to draw public attention to human rights concerns. Mr. Asif, also an activist for the political opposition, was arrested at his home on 17 September 2004 and was reportedly being held without charge and denied access to a lawyer. It was also alleged that he was arrested because of his involvement in a civil society network that monitors the conditions of detention of those arrested following the August demonstrations to ensure that their human rights are protected. From mid-August 2004 until his arrest, Mr. Asif had been interviewing those who had been released from detention to document human rights violations against detainees and has been helping the families of the detainees to draft letters to the authorities requesting the right to visit the detainees. Ms. Latheef, who has particularly focused on the prevalence of sexual abuse in the country, was reportedly arrested in front of the National Security Services (NSS) on 13 August 2004, as government forces broke up a demonstration with baton charges and tear gas. It was also reported that during her detention, the police kicked her in the back numerous times whilst she was blindfolded.

Communication from the Government

85. In 27 October 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 6 October 2004 and clarified the issue of the detainees and advised about the positive steps it had taken to improve the criminal justice system. Regarding Jennifer Latheef, she was arrested on 13 August 2004 in connection with an investigation into mob violence and was transferred to house arrest on 26 October. The Government will file charges against Ms. Latheef shortly and she will be provided with a fair and impartial hearing. Regarding Ismail Asif, he was arrested on 17 August as a result of the same investigation. His arrest has nothing to do with his involvement in a civil society network. He was detained and when investigations are complete he will either be charged or released. The right to legal counsel is guaranteed by article 16(2) of the Constitution. In April 2004, the right to legal representation was extended to the investigative stage so that now legal representation is available from the time of arrest to the conclusion of judicial proceedings. The Government advised it is fully committed to upholding the rule of law and internationally recognized legal principles guaranteeing human rights and fundamental freedoms.

Mexico

Comunicaciones enviadas al Gobierno

86. El 3 de agosto de 2004, el Relator Especial, junto con el Relator Especial sobre la cuestión de la tortura y el Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas, envió un llamamiento urgente relativo a la situación de inseguridad, peligro e indefensión judicial que estarían viviendo la señora **Carmela C.** y sus dos hijos, **F.P.C.** y **N.P.C.**, de 10 y de 8 años de edad respectivamente, indígenas Na Saavi (mixtecos) del municipio de Metlatonoc, en el Estado de Guerrero. De acuerdo con la información recibida, a raíz de una denuncia del particular Sr. Lorenzo Guerrero Vásquez, el 17 de abril de 2004 la policía preventiva de Metlatonoc, el Síndico Procurador Municipal, el Director de Seguridad Pública y el Sr. Lorenzo Guerrero Vásquez se habrían personado donde se hallaban los menores, acusándoles de un delito de robo que éstos afirmaban no haber cometido, y los habrían llevados a las oficinas del Síndico Procurador Municipal. N.P.C. habría estado retenida 20 horas en la cárcel municipal y F.P.C. lo habría estado seis días, durante los cuales habría sido sometido a impedimento del sueño y a amenazas de palizas y electrocución, con el objetivo de sonsacarle una declaración autoinculpatorio. Tras la intervención del Juez de Paz del municipio, el niño habría sido liberado. Una vez en casa, los niños habrían sido agredidos por el mismo particular que les habría pegado con una vara, sobretodo en la cabeza y en la espalda. Los golpes habrían ocasionado a F.P.C. una apertura en la parte posterior de la cabeza. La señora Carmela C. habría interpuesto una denuncia penal por los delitos de privación ilegal de la libertad, tortura, abuso de autoridad, lesiones e intimidación. Seguidamente, se habría abierto una investigación en contra de los funcionarios municipales y un médico forense habría certificado las lesiones supuestamente infringidas a los dos menores. Sin embargo, tanto la denuncia como la investigación habrían encontrado la oposición del Ministerio Público de la ciudad de Tlapa de Comonfort. Por otra parte, se informa que la Sra. Carmela C. y sus hijos estarían siendo objeto de nuevas intimidaciones y amenazas por parte del Sr. Guerrero y miembros de su familia. A la luz de la supuesta detención y agresión, el 30 de abril de 2004, contra los dos menores y las amenazas que han recibido después de haber presentado una denuncia, se han expresado temores por la seguridad y la integridad física y mental por ambos niños y su madre.

87. El 23 de agosto de 2004, el Relator Especial, junto al Relator Especial sobre la cuestión de la tortura y el Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas, envió un llamamiento urgente en relación a la situación de **Eduardo Hernández Sánchez**, un indígena tsotsil de 19 años de edad, **Carlos Navarro Pérez**, un indígena tzeltal de 23 años de edad, **Enrique Hernández Ramos** y su madre, **Romelia Ramos Bermúdez**, **Heriberto Gómez Coello**, abogado, **María del Carmen Grajales Castillejos**, abogada, y **Carlos Alberto Velasco**. De acuerdo con la información recibida, Eduardo Hernández habría sido detenido en San Cristóbal de las Casas, Estado de Chiapas, el 5 de enero de 2004. En dependencias policiales habría sido sometido a actos de tortura y otras formas de malos tratos. Eduardo Hernández habría sido acusado de estar implicado en el homicidio cometido en diciembre de 2003, y encarcelado el 9 de enero de 2004. El 24 de enero de 2004, Carlos Navarro habría sido detenido sin orden judicial en San Cristóbal de las Casas y conducido a la Subprocuraduría para ser interrogado sobre el mismo homicidio. También habría sido interrogado en un furgón, donde habría sido golpeado repetidamente y, en dos ocasiones, le habrían cubierto la cara con una bolsa de plástico. A la segunda vez, habría perdido el conocimiento. Habría sido conducido a la Procuraduría del Estado de Tuxtla Gutiérrez, donde

habría sido interrogado nuevamente y sometido a más golpizas en presencia de 10 policías y un miembro del Ministerio Público. El 26 de enero de 2004 habría sido obligado a firmar una confesión en la que habría reconocido haber participado en el asesinato, implicado a Eduardo Hernández, y afirmado que dicho asesinato había sido ordenado por Romelia Bermúdez y Enrique Hernández. Ese mismo día, Carlos Navarro habría sido encarcelado y Romelia Bermúdez detenida. Enrique Hernández habría sido detenido el 15 de abril de 2004 en la Ciudad de México y trasladado al Aeropuerto de la Ciudad de México. Allí habría sido atado en posturas forzadas, tales como acostado en la cama inferior de una litera, con el brazo estirado y la mano izquierda esposada a un tubo de la litera durante más de siete horas. Actualmente Eduardo Hernández, Carlos Navarro, Romelia Bermúdez y Enrique Hernández se encontrarían en el Centro de Readaptación Social (CERESO) 14 en Cintapala, Estado de Chiapas.

88. El 11 de agosto de 2004, los abogados que representaban a estas cuatro personas, Heriberto Gómez y María del Carmen Grajales, habrían sido detenidos por la policía en el municipio de Cintapala. Ambos habrían sido acusados de falsedad de declaraciones en grado de tentativa. Se han expresado temores que ello pueda ser un intento de impedirles defender a sus clientes. María del Carmen Grajales habría sido puesta en libertad bajo fianza el 12 de agosto, pero Heriberto Gómez seguiría encarcelado en Cintapala, pues no podría permitirse el pago de una fianza. Carlos Alberto Velasco también habría sido detenido por la policía el 11 de agosto de 2004. Según el Ministerio Público habría presenciado cómo Eduardo Hernández había cometido el homicidio. Sin embargo, Carlos Alberto Velasco habría declarado ante un juez que él no estaba presente en el momento de los disparos y que no sabía quien había cometido el crimen. Seguidamente habría sido acusado de falsedad de declaración. A la luz de estas alegaciones, se han expresado temores por la seguridad e integridad física y psicológica de las personas antemencionadas que permanecerían en detención.

89. El 1 de septiembre de 2004, el Relator Especial, junto con el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, envió un llamamiento urgente relativo a los altercados producidos y las denuncias de violación de los derechos humanos formuladas en el marco de la pasada cumbre UE-América Latina. De acuerdo con las informaciones recibidas, entre 6 y 19 personas habrían sido torturadas antes y después de la manifestación de 28 de mayo de 2004 que acabó con 111 detenidos. Supuestamente se habrían formulado también amenazas de muerte y se habría incurrido en irregularidades procesales con el fin de o bien amedrentar, o bien criminalizar a los manifestantes. Por otro lado, también se recibieron denuncias afirmando que agentes de seguridad se habrían infiltrado entre los manifestantes con el fin de crear un estado de confusión y violencia que sirviera de pretexto a los agentes antidisturbios uniformados para intervenir con dureza. El Gobernador del Estado de Jalisco, en cuya capital Guadalajara se celebró la III Cumbre de América Latina, Caribe y la Unión Europea, habría decidido junto al Ayuntamiento de dicha ciudad, no investigar las denuncias de vulneración de los derechos humanos por parte de las fuerzas de seguridad sobre los manifestantes allí congregados. Asimismo, tampoco la supuesta implicación policial en el origen de alguno de los altercados sería investigada. Dicha decisión resulta preocupante en modo sumo atendiendo al informe del pasado 16 de agosto la Comisión Nacional de derechos Humanos, organismo público que denuncia en dicho informe que la policía de Guadalajara cometió graves violaciones de los derechos humanos. Así, de acuerdo con la Comisión Nacional de Derechos Humanos, los derechos a la libertad de movimiento y a no sufrir torturas ni tratos inhumanos o degradantes habrían sido violados mediante el recurso a detenciones arbitrarias y vejaciones físicas y psicológicas de diversa gravedad sobre los manifestantes.

Respuestas del Gobierno

90. Mediante comunicación de 5 de enero del 2004, el Gobierno proporcionó información en relación con el llamamiento urgente enviado el 6 de marzo de 2003 con respecto a la situación de Samuel Alonso Castellanos Piñón. En su respuesta el Gobierno informó acerca de las medidas protectoras adoptadas en favor del Sr. Samuel Alonso Castellanos Piñón y de la Sra. Beatriz Casas Arellanos. Dichas medidas cautelares consistieron en incrementar los recorridos de vigilancia ya implementados, y en asignar permanentemente, en horario laboral, a un elemento de la Policía Auxiliar. Asimismo, el Gobierno comunicó su compromiso de revisar periódicamente el buen funcionamiento de las medidas acordadas.

91. Mediante comunicación del 2 de septiembre de 2004, el Gobierno proporcionó información en relación al llamamiento urgente enviado el 3 de agosto en relación a la situación de la Sra. Carmela C. y sus dos hijos, F.P.C. y N.P.C. En este contexto, el Gobierno informó que se dio inicio a una averiguación previa por los delitos de lesiones, privación de libertad personal, amenazas, allanamiento de morada e intimidación en contra del Síndico Procurador General, del Director de Seguridad Pública, elementos de la Policía Preventiva Municipal y de Lorenzo Guerrero Vázquez.

92. Mediante comunicación del 4 de noviembre de 2004, el Gobierno proporcionó información en relación al llamamiento urgente enviado el 23 de agosto de 2004 en relación a la situación de Eduardo Hernández Sánchez, Carlos Navarro Pérez, Enrique Hernández Ramos, Romelia Ramos Bermúdez, Heriberto Gómez Coello, María del Carmen Grajales Castillejos y Carlos Alberto Velasco. El Gobierno informó que, en relación a la muerte el 9 de diciembre de 2003 en San Cristóbal de las Casas del profesor Antonio de Jesús Gómez López, se dio inicio a varias diligencias, que llevaron fehacientemente a determinar que alguien apodado "Lalo" había asesinado al mencionado profesor. A continuación, un informe policial señaló que el sobrenombre de "Lalo" correspondía a Eduardo Hernández Sánchez, quien trabajaba en la tienda regentada por Hernández Ramos y Romelia Ramos Bermúdez. Con los datos mencionados, la policía procedió a detener a Eduardo Hernández Sánchez, quien pese a intentarlo, no logró darse a la fuga. En el momento de su detención se le incautó un arma con cuatro cartuchos percutidos y se procedió a su puesta a disposición del Ministerio Público de San Cristóbal. Una vez trasladado a Tuxla Gutiérrez, se le puso a disposición de la brigada de homicidios y prestó declaración asistido del abogado de su elección. En su declaración, Eduardo Hernández Sánchez desmintió la acusación pero afirmó en cambio que en el pasado se había enemistado con el director de la escuela y que el mismo día del asesinato había acudido a la escuela para intentar restablecer una buena relación. El mismo día se levantó fe ministerial acerca de la integridad física de Eduardo Hernández Sánchez, lo que se repitió horas más tarde con el mismo resultado positivo. Con posterioridad, distintos testigos coincidieron en señalar que Eduardo Hernández Sánchez era la persona que había preguntado por el director y que habían visto por los alrededores del lugar de los acontecimientos, por la que se procedió a la consignación de Eduardo Sánchez como autor material del asesinato. Posteriores investigaciones llevaron a consignar a Carlos Navarro Pérez, Enrique Hernández Ramos y Romelia Hernández Bermúdez, el primero como partícipe y los segundos como autores intelectuales del homicidio calificado del profesor. El Gobierno negó que se torturara a Eduardo Sánchez Hernández, en primer lugar, por la ilegalidad del método, y en segundo lugar, porque de la detención se realizó el día anterior a lo que afirma la presunta víctima. El Gobierno afirmó que entre su detención y traslado ante el Ministerio Público

transcurrió tan sólo una hora, tiempo en el cual habría sido imposible torturarlo como afirmaba. Por otro lado, la tortura para extraer la confesión no habría tenido sentido, ya que la única declaración válida en el sistema mexicano es la que se produce ante el Juez o el Ministerio Público. Además, dicha autoinculpación no era necesaria, por cuanto los testigos habían proporcionado las certezas suficientes. A todo ello debe añadirse el hecho de que declaró ante el abogado de su elección y que las pruebas médicas que se le practicaron concluyeron que no había lesiones recientes en su cuerpo.

Nepal

Communications to the Government

93. On 24 February 2004 the Special Rapporteur sent a joint urgent appeal 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 Chairperson-Rapporteur of the Working Group on Arbitrary Detention concerning two lawyers, **Bal Krishana Devkota** and **Dhananjaya Khanal**, who were reportedly arrested on 21 February 2004 in separate incidents. Three security personnel in plain clothes came to Mr. Devkota's house in Sita Paila VDC Ward No.2 Kathmandu, and started questioning him. Mr. Devkota replied that he was a lawyer at the Supreme Court. His house was then searched and he was taken away for further questioning. His whereabouts have been unknown since then. In a separate incident, Mr. Khanal was reportedly arrested by a group of army personnel at his residence in Sanepa-2 Lalitpu, Kathmandu. Mr. Khanal is from Tanahun district and has been working as a lawyer with the Central Legal Service, Maitighar Kathmandu. His whereabouts have also reportedly been unknown since his arrest. A number of lawyers have reportedly been arrested in recent months. There was concern that these lawyers were possibly targeted by the authorities for being "associated" with their clients, reportedly charged under the provisions of the anti-terrorist legislation of Nepal (TADA).

94. On 26 April 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture concerning the situation of **Koirala Girija Prasad**, President of the Nepali Congress, and lawyers **Shyam Kumar Shrestha**, **Gopi Krishna Thapaliya**, **Gopi Bahadur Bhandar**, **Basudev Sigdel**, **Krishna Silwal**, **Laxman Prasar Ayril** and **Jeetaman Basnet**. On 8 April 2004, an order banning public demonstrations and the assembly of more than five persons within the Kathmandu Ring Road and the Lalitpur areas was allegedly issued by the Kathmandu District Administration. Following this, lawyers, journalists and other people demonstrating to protest against the current situation in the country have reportedly been violently repressed. On 9 April, several hundred lawyers were arrested and subsequently released following a demonstration. On 11 April 2004, the security forces allegedly released 50 journalists after detaining them for two hours in Kathmandu. It was believed that these journalists were taking part in a protest against the 8 April renewal of the Government's prohibition of public assemblies of more than five people. It was also reported that in the afternoon of 15 April 2004, over 1,000 peaceful demonstrators were arrested and held in warehouses and other overcrowded and unsanitary locations unsuitable for the detention of prisoners – in many cases for a number of days – before being released without charge. In addition, it is believed that three students and 11 political party members, who reportedly participated in the protests, including the President of the Nepali Congress, Girija Prasad Koirala, were held in preventive custody under the Public Security Act. It was also alleged that

some of those arrested continue to be held incommunicado. According to additional reports, 200 journalists from different locations in Kathmandu were arrested by the security forces on 17 April 2004 and held at several detention centres before being released the same day. It is reported that the journalists were protesting the alleged detention of 74 journalists who were arrested on 16 April 2004 while reporting on a protest organized by the five main political parties. On 21 April 2004, it is reported that 300-500 lawyers were arrested during a peaceful demonstration in Kathmandu, organized by the Nepal Bar Association. The demonstration was in protest against the Government's decision to prohibit all demonstrations and to denounce the restriction on the right to peaceful assembly. Reportedly, the lawyers were arrested and taken to Mahindra Police Club where they were subsequently released but were not able to seek legal representation during the time of their arrest. It appeared that lawyers and journalists in Nepal were subject to an increasing number of incidents of harassment and interference in their professional activities.

95. On 6 August 2004 the Special Rapporteur, with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent a joint urgent appeal regarding **Upendra Timilsena**, detained at Mahabir Guan Himalaya Barrack, Chauni Kathmandu, despite a Supreme Court order of 23 July 2004 to the Chief District Officer, Kathmandu, to release him immediately. Mr. Timilsena was reportedly illegally arrested by security personnel on 8 June 2004. For the past several months there have reportedly been a number of cases of members of the army and the police re-arresting people immediately after they are released by court orders, or of persons continuing to be detained in spite of a court order to release them. There is a real concern that the security forces are trying to undermine and weaken the authority of the judiciary by not obeying court orders.

96. On 29 September 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture regarding **Govinda Damai**, who had been reportedly rearrested and was feared to have "disappeared" on the same day he was released from illegal detention. On 19 July 2004, Mr. Damai, from Kohalpur-5, Banke district, was arrested by armed security forces from Rajhena, Banke, and on 23 July was detained on a three-month preventative detention order pursuant to the Public Security Act. On 26 September the Appellate Court, Nepalgunj, ruled that Mr. Damai had been illegally detained and ordered his release. However, on 27 September Mr. Damai was re-arrested and taken away by security forces and his whereabouts are unknown. The District Police Office, Banke, has denied knowledge of his detention.

97. On 29 September 2004, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture regarding **Jimdar Kewat** and his father, **Keshu Ram Kewat**, both residents of Betahani village, Banke district. According to the allegations received, Jimdar Kewat and Keshu Ram Kewat were arrested by the army on 15 April 2004 in Nepalgunj, Banke. They were blindfolded and put into an army vehicle and taken to Fultekra barracks. During the first four days of their detention they were kept blindfolded, beaten with wooden sticks and electric wires, and questioned about the activities of Maoist forces. They were not given access to their family members, lawyers and medical services. On 31 May 2004 the army handed them over to the District Police Office, Banke, and they were detained under the Public Security Act until 19 September 2004, when the Nepalgunj Appellate Court ordered their release. However, on 20 September their lawyers and family members were informed that Keshu

Ram Kewat and Jimdar Kewat had been re-arrested by the police. They were detained in the Wada Police Office, Nepalgunj. Concern was expressed for their physical and mental integrity.

Communications from the Government

98. On 23 December the Government replied to the Special Rapporteurs' joint urgent appeal of 29 September 2004 and advised that both Jimdar Kewat and Keshue Ram Kewat were detained pursuant to TADA and held at the District Prison in Nepalgunj, Baanke.

Press release

99. On 14 July 2004, the Special Rapporteur, jointly with other Special Rapporteurs and Independent Experts, issued the following press release:

“UN COMMISSION ON HUMAN RIGHTS EXPERTS REITERATE GRAVE CONCERN OVER SITUATION IN NEPAL

“The following statement was issued today by the Special Rapporteur on torture, Theo van Boven; the Special Rapporteur on violence against women, Yakin Ertürk; the Special Rapporteur on extrajudicial, summary and arbitrary executions, Asma Jahangir, the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo; the Special Representative of the Secretary-General on human rights defenders, Hina Jilani; the Chair of the Working Group on Enforced or Involuntary Disappearances, Diego García-Sayán, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leïla Zerrougui:

“Eight independent experts of the United Nations Commission on Human Rights reiterate today their serious concern regarding the extremely grave human rights situation in Nepal.

“The experts indicate that since the beginning of 2004, they have transmitted 146 urgent appeals and other communications to the Government of Nepal regarding reported violations of human rights. Many of the communications concern individuals arrested by security personnel, often on suspicion of supporting or being involved with activities of Maoist groups. It is reported that these individuals are subsequently taken to undisclosed locations, which puts the detainees at risk of being tortured or of suffering other forms of cruel, inhuman or degrading treatment, including rape. The experts regret that the Government has failed to respond many of their appeals, and that it has provided virtually no information on the fate or location of people detained in unknown locations. The experts recall their previous public statements on human rights violations in Nepal issued on 12 November 2003 and 9 March 2004, as well as statements by the former acting High Commissioner for Human Rights made in the last year.

“The experts also express serious concern over the significant increase in reports of abuses and attacks against civilians by insurgents.

“The independent experts acknowledge the Government's Commitment on the

Implementation of Human Rights and International Humanitarian Law announced on 26 March 2004. They strongly urge the Government to live up to its commitments and implement fully and without delay the 25 undertakings contained in this most important document. They welcome the establishment of an investigative commission under the Ministry of Home Affairs to probe the cases of disappearances, in accordance with point 22 of the Government's Commitment. They emphasize the need for the Investigative Commission to address the serious issue of disappearances immediately.

"The experts again urge all parties to the conflict to find a peaceful solution that would put an end to the widespread suffering in Nepal. In particular, the experts take this opportunity to urge the Royal Nepalese Army to cooperate with the courts and the National Human Rights Commission in providing information about the conditions and whereabouts of those held in its custody.

"They recall Article 3 common to the four 1949 Geneva Conventions, which is binding on all parties to a non-international conflict, and enshrines the protection of life and the physical integrity of the human person, including the prohibition of cruel treatment and torture at any time in any place. Article 3 applies to all persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause. The experts also refer to international human rights norms that strictly prohibit the use of torture and other forms of ill-treatment under any circumstances. They recall that according to these general principles of international law, rape during armed conflict is considered to be a war crime and states have an affirmative duty to prevent, punish and prosecute perpetrators of such crimes at all times.

"The independent experts call on all parties to the conflict to comply strictly with these international human rights and humanitarian norms."

Observations of the Special Rapporteur

100. The Special Rapporteur regrets that he has received very little information from the Government on the status of the above-noted cases. He continues to be extremely concerned about the deteriorating human rights situation in Nepal.

Panamá

Comunicación enviada al Gobierno

101. El 28 de julio de 2004, el Relator Especial envió una carta de alegación expresando su preocupación por la información recibida conforme a la cual el Gobierno de Panamá está estudiando la denuncia de la Convención sobre los Derechos del Niño para emprender una reforma legal que permita imponer a menores de edad sentencias de mayor duración y la aplicación de la pena de muerte a dichos menores.

Respuesta del Gobierno

102. El 29 de julio de 2004 el Gobierno respondió a la carta de alegación enviada por el Relator Especial el 28 de julio de 2004. El Gobierno remitió información relativa al proyecto de ley enmarcado en el plan “Mano Dura”, incluyendo el propio proyecto de ley original, las discusiones que al respecto mantuvo la Comisión de los Asuntos de la Mujer, Derechos de la Niñez, la Juventud y la Familia, y el proyecto de ley enmendado de acuerdo con lo dispuesto por la Comisión de los Asuntos de la Mujer, Derechos de la Niñez, la Juventud y la Familia. Así, mientras en el proyecto de ley original se preveían penas de hasta 20 años para los menores que cometieran aquellos delitos más graves, en el proyecto de ley enmendado contempla penas de hasta 10 años.

Perú

Comunicaciones enviadas al Gobierno

103. El 7 de septiembre de 2004, el Relator Especial, junto con la Relatora Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la cuestión de la tortura, envió un llamamiento urgente en relación con **Luis Alberto Ramírez Hinostroza**, quien fue víctima de tortura durante la dictadura militar y es actualmente uno de los testigos principales ante la Comisión de la Verdad y Reconciliación del Perú y en el proceso judicial contra un general retirado acusado de la desaparición forzada de nueve personas en 1991. De acuerdo con la información recibida, Luis Alberto Ramírez Hinostroza habría recibido amenazas de muerte y ataques contra su persona en varias ocasiones durante los últimos meses. El 13 de marzo de 2004, cuatro individuos habrían disparado contra él llamándole “bocón” mientras le perseguían. El 6 de mayo habría recibido una carta con amenazas junto con dos fotografías de su hija y su esposa. En julio del mismo año, habría recibido otras amenazas de muerte en su casa. En otra ocasión, cuando visitó el lugar donde habría sido torturado años atrás, unos soldados lo habrían fotografiado y amenazado con detenerle. A finales de agosto de 2004, Luis Alberto Ramírez Hinostroza habría notado que alguien le estaba siguiendo. Seguidamente habría solicitado ayuda ante la procuraduría de Huancayo. Sin embargo, le habrían informado que el funcionario solicitado no se encontraba y habría tenido que irse sin protección policial. Dos días más tarde, el 30 de agosto, un hombre y una mujer le habrían disparado desde un vehículo negro cerca de su casa, en El Tambo, Huancayo. Luis Alberto Ramírez Hinostroza habría resultado herido en el estómago y habría sido conducido al Hospital El Carmen, donde habría sido operado. Antes del último ataque, habría recibido una carta oficial en la que se le indicaba que se le otorgaban garantías personales, pero no se le habría proporcionado asistencia física. Durante su estancia en el hospital dos agentes de policía estarían encargados de su seguridad; sin embargo, no se le habrían garantizado la asistencia de guardaespaldas para más adelante.

104. El 22 de noviembre de 2004, el Relator Especial, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con la situación de **Gloria Cano**, abogada y defensora de los derechos humanos de la organización no gubernamental Asociación Pro Derechos Humanos

(APRODEH), quien habría recibido una amenaza de muerte. Gloria Cano habría sido también víctima de un acto de intimidación en enero de 2003, cuando habría sido rodeada, insultada y golpeada por un grupo de individuos no identificados delante de las oficinas de APRODEH. Gloria Cano denunció la amenaza de muerte ante la Fiscalía de la Nación, el 25 de octubre. La Comisión Interamericana de Derechos Humanos ha pedido al Estado peruano que les informe cuales medidas está tomando para investigar esta denuncia. Según se informa, Gloria Cano recibió la amenaza al día siguiente de la publicación de un comunicado de prensa de APRODEH que mostraba su preocupación por la excarcelación de Vladimiro Montesinos (ex asesor presidencial sobre inteligencia), Nicolás Hermoza Ríos (ex comandante en jefe de las fuerzas armadas) y Roberto Huamán Azcurra (ex director del Servicio de Inteligencia Militar - SIE), que habían permanecido detenidos los últimos 18 meses por su presunta implicación en el homicidio de tres miembros del grupo armado de oposición Movimiento Revolucionario Túpac Amaru (MRTA) durante una operación militar de 1997. Los acusados habrían sido excarcelados porque, a causa de las demoras en el juicio, habían excedido el plazo máximo de detención preventiva permitido por la ley. Gloria Cano es el abogado de las familias de las víctimas desde 2001 y se supone que las amenazas recibidas estén relacionadas con su trabajo de abogado y defensor de los derechos humanos en relación con este caso.

105. El 28 de diciembre de 2004, el Relator Especial, junto con el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con la situación de **Henry Cama Godoy**, Fiscal Provincial Titular de la Fiscalía Provincial Mixta de Chincha, quien habría recibido amenazas. De acuerdo con las informaciones recibidas, el 3 de febrero de 2004, el Sr. Cama Godoy habría formalizado denuncia penal contra Ricardo Enrique Guillén Balbín, Mayor PNP Jefe del Departamento de Investigación Policial y Prevención de Chincha, por los delitos de tortura, usurpación de funciones, desobediencia a la autoridad y abuso de autoridad en agravio de Pablo Fabio Sánchez Conde. El agraviado, al revisar el expediente, se habría encontrado con una declaración jurada, firmada supuestamente por él, por la cual se desistía de la denuncia y afirmaba que la denuncia fiscal era totalmente falsa. El agraviado no habría reconocido como suya la firma ni la huella digital de la declaración jurada, firmada también por el abogado Darío Armando Viteri Ormeño. El Sr. Cama Godoy, ante esta evidencia, habría solicitado al Juez Penal que se remitieran copias certificadas de las piezas del proceso a la fiscalía de turno para la investigación que corresponde. A partir de ese momento, el Sr. Cama Godoy habría empezado a recibir llamadas amenazadoras a su teléfono celular, pese a haber cambiado de número, y al teléfono de su despacho, así como denuncias penales en su contra. El 5 de diciembre 2004, aproximadamente a las 9.30 de la noche, el personal de seguridad del Ministerio Público de Chincha habría recibido una llamada telefónica, pidiendo se comunicara al Sr. Cama Godoy el siguiente mensaje: "Dile a ese doctor que deje el caso que esta viendo o de lo contrario se va joder". Al día siguiente, el asistente del Sr. Cama Godoy, Américo Mendoza Muñoz, habría recibido una llamada telefónica a las 8.50 de la mañana, escuchando una voz masculina que le dijo: "Dile a ese fiscal de mierda que de parte del Dr. Viteri si no se aparta de ese proceso lo vamos a joder". También, el 29 de noviembre de 2004, el abogado Darío Armando Viteri Ormeño habría denunciado ante la comisaría de Chincha que dos sujetos desconocidos habían incursionado en su domicilio de parte del Sr. Cama Godoy, con la finalidad de coaccionarlo y que acepte haber sido el autor de la falsificación denunciada. Estas amenazas han generado que el fiscal habría tenido que retirar de Chincha a su familia por razones de seguridad y, finalmente, el 6 de diciembre, habría tenido que excusarse del proceso.

Respuestas del Gobierno

106. Mediante comunicación del 17 de septiembre de 2004, el Gobierno proporcionó información acerca de las medidas adoptadas en relación al caso de Luis Alberto Ramírez Hinostroza, cuya situación fue objeto de un llamamiento urgente del 7 de septiembre de 2004. El Gobierno peruano proporcionó información sobre las medidas policiales adoptadas antes y después del atentado contra Luis Alberto Ramírez Hinostroza. El Gobierno señaló que, posteriormente al atentado, se procedió a instalar un servicio de seguridad personal al agraviado, con dos efectivos policiales durante las 24 horas del día. Además, personal de la Jefatura de Investigación Criminal y Apoyo de la Justicia fue encomendado para identificar, ubicar y capturar a los presuntos autores. El Gobierno señala también que antes del atentado, el 22 de marzo 2004, el Juez Penal del Cuarto Juzgado Penal de Huancayo, Sr. Eduardo Torres Gonzales, había instado a la Prefectura Regional de Junín a que se brindaran garantías personales al agraviado. El 15 de abril, el Prefecto había resuelto otorgar dichas garantías personales al agraviado y su familia, en contra de Luis Pérez Document, contra el cual Luis Alberto Ramírez Hinostroza tiene un proceso judicial por tortura, conminando al Sr. Pérez Document a abstenerse de todo acto intimidatorio y amenazas en contra de Luis Alberto Ramírez Hinostroza.

107. Mediante comunicación del 23 de diciembre 2004, el Gobierno proporcionó información en relación con el llamamiento urgente enviado el 22 de noviembre de 2004 sobre la situación de Gloria Cano, abogada y defensora de los derechos humanos de la organización no gubernamental APRODEH, quien habría recibido amenazas de muerte. El Gobierno informó que, con fecha 26 de octubre de 2004, la Fiscalía Penal ingresó la denuncia presentada por la Sra. Cano, por delito contra la libertad, en contra de los que resulten responsables, y que dicha denuncia fue remitida a la División de la Policía del Ministerio Público a fin que se lleven a cabo las investigaciones preliminares. Asimismo, el Gobierno informó que el 5 de noviembre de 2004 la Policía Nacional dispuso la adopción de una serie de medidas en relación con la solicitud de medidas de seguridad solicitadas por la Sra. Cano. En particular, se dispuso otorgar servicio de seguridad y vigilancia del local de APRODEH a cargo de la Comisaría PNP de Jesús María y brindar medidas de protección personal a la Sra. Cano, así como efectuar las investigaciones del caso con relación a su denuncia.

Russian Federation

Communications to the Government

108. On 4 May 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding **Stanislav Markelov**, a human rights lawyer who has worked on behalf of victims of alleged human rights violations in Chechnya and was representing the family of Zelimkhan Murdalov, a Chechynan student who reportedly disappeared in January 2001 following his arrest by Russian Special Police Detachment (OMON) forces in Grozny in the court case opened against Sergei Lapin, a member of OMON, in connection with his disappearance. On 16 April 2004 Mr. Markelov was travelling home on the Moscow metro when he was reportedly attacked by five men, dressed in civilian clothing, who surrounded him and shouted: "You got what you're asking for. No more speeches from you in court." They allegedly hit him on the head with a heavy object, causing

him to lose consciousness. He reportedly regained consciousness a few hours later and discovered that his lawyer's licence card, his passport and his entry card for the State Duma, as well as various documents related to his cases – including those related to the trial of Sergi Lapin - had been stolen. Mr. Markelov was taken to City Hospital No 68 where he was diagnosed as suffering from concussion. On 19 April he reportedly presented a medical certificate of his injuries to the Subway Security Section of the Moscow Department of Internal Affairs No. 8, but the police officer on duty reportedly claimed that the certificate was fake and stated that he could only file a lost property complaint. On 21 April he also reportedly filed a complaint about the attack with the Moscow City Department of Internal Affairs. It is reported that a criminal investigation has not yet been opened. It is reported that he also represented a journalist who allegedly received death threats for publishing an article in relation to the same torture case. Concern has been expressed that Stanislav Markelov has been targeted for his human rights activities and in particular his work to defend victims of human rights violations in Chechnya.

109. On 3 November 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention regarding **Oleg Evgenyevich Khoroshunin**, a student who resided in Kiev, Ukraine, and is a citizen of the Russian Federation. On 30 October 2004, he was arrested by the Essentuki (Stavropol region) local police when he went to the station to apply for an "internal passport". He was beaten on his stomach and genitals. No reasons have been given for his arrest and detention. He has been denied access to a lawyer.

Communications from the Government

110. The Government sent a reply to the Special Rapporteurs' joint urgent appeal of 3 November 2004 and a summary of the reply will be included in next year's report.

Saudi Arabia

Communications to the Government

111. On 23 April 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders concerning the situation of **Dr Matrouk al-Falih, Dr Abdullah al-Hamid, Muhammad Sa'id Tayyab, Dr Tawfiq al-Qussayyir, Suleyman al-Rashudi, Najib Al Khunaizi, Khalid Al-Hameed, Amir Abu Khamsin, Ali Al Dumaini, Adnan Al Shikes, Hamad Al-Kanhel and Abdul-Rahman Alahim**. These persons were reportedly arrested on 15 March 2004 by the Mabathith (secret police), apparently for criticizing the Government-appointed National Commission on Human Rights (NCHR) and for planning to set up their own "Saudi Independent Human Rights Committee", in a petition delivered to the Government and signed by 116 intellectuals. They were reportedly held incommunicado at the General Intelligence (al-Mabahith al-'Ammah) in 'Ulaysha, in Riyadh. Nine of the 12 people listed above were released between 17 and 29 March 2004, after they were allegedly forced to sign a pledge to end their participation in any political or human rights activities and to stop calling for reforms in the Kingdom. Dr. Matrouk al-Falih, Dr. Abdullah al-Hamid and Ali Al Dumaini, a poet, are believed to be held in incommunicado detention because of

their refusal to sign this pledge. No charges have been filed against them to date and they have been denied access to their lawyers since their arrest.

112. On 24 August 2004 the Special Rapporteur sent an urgent appeal concerning the situation of **Suliman Al-Rashoodi, Abdallah Al-Naseri, and Abdulaziz Al-Waheebi**, three lawyers who were reportedly prevented from representing Dr. Abdalalh Al-Hamed, Ali Al-Domaini and Dr. Matrook Al-Faleh. The trial at the Riyadh High Court started on 9 August 2004 when the judge reportedly told the lawyers that they were not allowed to represent their clients. When the lawyers asked judge Bin Khunain the reason why, he said that it was on the orders of the Minister of Justice, Mohamed Al-Alshaikh.

113. On 17 November 2004, the Special Rapporteur sent an urgent appeal concerning the situation of **Abdul Rahman Al-Lahem**, a lawyer and member of the Arab Commission on Human Rights, and part of the legal team defending the three reform activists on trial in Riyadh. Mr. Al-Lahem was arrested by Saudi intelligence forces on 6 November 2004 following a letter he sent to Crown Prince Abdullah, on behalf of the defendants, which accused the trial judges of denying the three men a fair trial due to delaying tactics, judicial bias and the denial of the right to a public trial, including the right of international and national media to attend. Concern was expressed that his arrest may be linked to his work as legal counsel to the imprisoned reform activists. Concern is heightened by the fact that on 17 March 2004, Mr. Al-Lahem had reportedly already been arrested and detained for eight days in connection with his active defence and support of the three accused.

114. On 30 November 2004, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the question of torture concerning the situation of **Abbas Majood Akanni, Murtala Amao Oladele, Abbas Azeez Oladuni, Nurudeen Owoalade, Nurudeen Sani, Mohammed Abdulahi Yussuf, Wahid Elebyte, Ahmed Abbas Alabi, Suliamon Olyfemi, Mafiu Obadina, Samiu Hamud Zuberu, Kasim Afolabi Afolabi, and Abdullamim Shobayo**, all Nigerian nationals and migrant workers resident in Jeddah. According to the allegations received, the above-named 13 men were among hundreds detained in Jeddah on 29 September 2002 after a policeman was killed in a fight between local men and African nationals. Subsequent to their arrest, the 13 Nigerian nationals were reportedly tortured and ill-treated, including being hung upside down and beaten and subjected to electric shocks to the genitals. Since their arrest over two years ago, the men have not had access to a lawyer or consular assistance. Moreover, translators were present on only two of the four court appearances, and all proceedings and court documents are in Arabic. On 22 November 2004, a hearing in the case of the 13 men took place before three judges in a closed session, without the assistance of a lawyer, a consular representative or adequate interpretation facilities. They could not fully understand the proceedings, which were conducted in Arabic, and were not able to fully understand whether the hearing concerned the prolongation of their detention or constituted their trial. According to the information received, if the policeman killed on 29 September 2002 had children (which is not known), and if the 13 Nigerians are sentenced to death, they will remain in prison until these children reach the age of 18, when they can accept or reject the payment of *diya* (blood money) in place of the death penalty. Otherwise, the 13 would be at risk of imminent execution.

Communications from the Government

115. On 12 August 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 23 April 2004 concerning the arrest of a group of persons on 15 March 2004. The Government reported that Matrouk al-Falih, Muhammad Sa'id Tayyab, Suleyman al-Rashudi, Abdullah al-Hamid, Tawfiq al-Qussayyir and Ali Al Dumaini had been arrested and charged with engaging in acts which, inter alia, justified terrorism, encouraged violence and incited civil disturbance. Between 27 March and 28 April, orders were issued for the release of Tawfiq al-Qussayyir, Muhammad Sa'id Tayyab and Suleyman al-Rashudi after they admitted their misguided acts and apologized, and criminal proceedings were dropped. Regarding Matrouk al-Falih, Abdullah al-Hamid and Ali Al Dumaini, the accusations were substantiated and their case was referred to the court. All the accused have enjoyed the rights guaranteed under the Kingdom's Code of Criminal Procedure, including the right to have the charges against them heard by a court of law. At their trial, the first hearing, on 9 August, was a public hearing attended by their lawyers in which the Public Prosecutor read out the indictment. The trial was to continue with a second hearing on 23 August.

116. On 30 September 2004 the Government replied to the Special Rapporteur's urgent appeal of 24 August 2004 concerning three lawyers who were reportedly prevented, by order of the Minister of Justice, from representing their clients. The Government replied that the information was not new information as it was based on reports circulated in the media as the trial was a public hearing where full details were accessible to all. In the Government's reply of 12 August the Government had already indicated the reasons for the trial, the charges brought against the persons concerned and the guarantees enjoyed by the accused under the judicial system, including the right of the accused to appoint a lawyer in his defence. The accused persons concerned were represented and defended in court by legal counsel since, under the regulations, they have a guaranteed right to plead either in person or through lawyers appointed by them. In fact, all the accused, together with their defence counsel, commended the transparent and public nature of the trial proceedings. The Code of Practice for Lawyers grants lawyers the unrestricted right to plead on behalf of their clients and embodies all the guarantees necessary to help them to discharge their task effectively, including their right not to be held accountable for the content of statements made in their written or verbal pleadings (article 13). The judiciary is fully independent of any other authority and no one is permitted to interfere in the judicial proceedings of any trial (article 1 of the Statutes of the Judiciary). The guarantees enjoyed by the lawyers are consistent with international standards, including the rules governing the legal profession. Under the Statutes of the Judiciary, the court has the right to rule on a lawyer's eligibility to accept a particular case and the lawyer has an obligation to respect the rules and directives governing his activities. The rules of the Code of Practice for Lawyers states, inter alia, that a lawyer who has previously expressed an opinion on a case in his official capacity is disqualified from accepting the same case (article 17). These three lawyers had not only previously expressed an opinion on the case before it came to trial, but were also direct parties thereto. Accordingly, the judge was entitled to take a final and independent decision on the extent of their eligibility at this full discretion and without interference from any other body. Concerning the maintenance of order during court hearing, pursuant to article 155 of the Code of Criminal Procedure, the judge has the right to decide whether he wishes to hear all or part of the case in camera or to bar certain categories of persons from attending the hearing out of regard for security or in order to safeguard public morals. The Government referred to principle 19 of the United Nations Basic Principles on the Role of Lawyers regarding circumstances where lawyers can be prevented from

appearing before the court if disqualification is in accordance with national law and in conformity with these principles.

Sierra Leone

Observations of the Special Rapporteur

117. The Special Rapporteur welcomes the 13 March 2004 decision by the Special Court for Sierra Leone to refuse to recognize the applicability of a national amnesty for crimes against humanity and war crimes. This is a significant step in combating impunity for such serious crimes and acknowledges the international jurisprudence and international treaty body conclusions that States cannot use national amnesties to prevent international or foreign courts from exercising jurisdiction over crimes committed against the international community. While the ruling did not explicitly state that the amnesty provision of the 1999 Lomé peace agreement is void under international law and could not be applied by the national courts of Sierra Leone, the Special Rapporteur believes that this decision will help to strengthen such important institutions such as the International Criminal Court.

South Africa

Communication to the Government

118. On 17 February 2004 the Special Rapporteur sent an urgent appeal concerning Judge **Graham Travers**, a magistrate of the Regional Division of Northern Transvaal. Judge Travers currently presides over Court 12, which is a sexual offences court. It was alleged that the National Prosecuting Authority made a decision not to put any new trials before Judge Travers because he has a low completion rate of cases. Judge Travers suffers from muscular dystrophy, a condition which he disclosed when he was appointed as a judge in 1990. Judge Travers' condition has deteriorated in recent years and, as result of his condition, he takes longer to fulfil his judicial duties because he writes slowly. There was a concern that the National Prosecuting Authority's directive not to place any new cases before Judge Travers amounted to a de facto suspension of his judicial authority as it did not appear to be done in accordance with proper legal procedures and thus could be regarded as interfering with the independence of the judiciary. Further, the fact that Judge Travers has a disability means he is entitled to protection under United Nations General Assembly resolution on the rights of disabled persons.

Communication from the Government

119. On 6 May 2004 the Government responded to the Special Rapporteur's urgent appeal of 17 February 2004. The Government detailed the high prevalence of sexual abuse of children in South Africa and the actions taken by the Government to face this situation, among them the establishment of specialized courts with highly trained staff. The number of outstanding child abuse cases is extremely high. The Government therefore took the initiative to establish three specialized sexual offences courts. At the time of the Government response, there were 419 cases on the rolls of these three courts. By placing new cases before Mr. Travers whilst he has many pending ones, an already unsatisfactory state of affairs would be further worsened and the backlogs increase. The Government pointed out that Mr. Travers was formally invited to the

office of the National Director of Public Prosecutions to resolve the problem, but instead he preferred to raise the matter in the local press and with others.

Sudan

Communications to the Government

120. On 5 February 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of the human rights defenders concerning **Salih Mahmoud Osman**, a human rights defender and member of the Sudan Organisation Against Torture (SOAT) lawyers' network, who was arrested at his home in Wad-Madani on 1 February 2004. He was detained and interrogated at the National Security Agency (NSA) offices in Wad Madani,. Although Mr. Osman had not yet been formally charged with any offence, it is believed that he might have been arrested in connection with his activities in defence of human rights, in particular the fact that he provides free legal aid and legal representation to victims of human rights abuses and to those who face capital punishment or severe punishments (amputation) in the Darfur region, and to the fact that he has written articles and published research on the current conflict in Darfur.

121. On 2 April 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary General on the situation of the human rights defenders regarding lawyers **Baroud Sandal Ragab, Ismail Oman, Mohamed Haroun, Mohamed Sha rief Ali and Abdalla Aldoma**. They were arrested on 19 March in Khartoum, and held incommunicado in a special section of Kober prison. Abdalla Aldoma, a prominent member of the opposition Umma party, headed a delegation of that party to the National Committee for the Development and Restoration of Social Infrastructure in Darfur. It is alleged that his arrest is linked to the delegation's withdrawal from that Committee. The other four lawyers are members of the Popular Congress, another opposition party. Their arrest was reportedly related to their participation in a number of demonstrations with displaced persons from Darfur, denouncing the lack of shelter and food.

122. On 4 of April 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on violence against women, its causes and consequences, concerning the situation of **Alakor Lual Deng**, from the Dinka ethnic group, who is reportedly at risk of being executed by stoning after she was allegedly convicted of adultery (article 146 of the Penal Code which prohibits sexual intercourse in the absence of a lawful relationship) by the Criminal Court in Nahud, West Kordofan State, in July 2003. Alakor Lual Deng has four children with a man from Kordofan, whom she is not "formally" married to. In 2003, on the basis of her confession, she was reportedly convicted of committing adultery with another Dinka man, Bol Yak Afoon, with whom she had a child out of wedlock. Reportedly, Ms. Deng was not represented by a lawyer at her trial nor was she allegedly provided with a Dinka interpreter, even though the trial was conducted in Arabic. It was further reported that an appeal against her sentence was sent to the Supreme Court, which will decide whether the

sentence will be upheld or overturned. Meanwhile, Ms. Deng remains in prison in El Obeid, North Kordofan State, with her 10-month-old baby.

123. On 15 April 2004 the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the question of torture concerning the situation of **Mahmoud Yahya Adam, Yahya Al-Doum Haroun, Idris Ibrahim Idris**, all from Silaya village, and **Abdel Karim Abdallah Adam** from Jiway. They were reportedly arrested by police on 29 March 2004 in the hamlet of Jiway, Khina village, 80 km east of Nyala. They were convicted of armed robbery in a trial where it is alleged that they had no legal representation, and they were sentenced to amputation of the right hand and left foot by the Nyala Specialized Criminal Court on 3 April 2004. In South Darfur, the replacement of the Special Courts with the Specialized Criminal Courts in April 2003 enables accused persons to have access to legal representation during the trial. However, lawyers allegedly complain that they do not have access to their clients prior to the commencement of the trial. In this specific case, it appears that these four men did not have access to a lawyer before or during their trial. The four men allegedly lodged an appeal in accordance with the appeal procedures of the Specialized Criminal Courts, which reportedly must be made within seven days to the Chief Justice of South Darfur State, whose decision is said to be final, except on cases of amputation and the death penalty, where a final appeal may be made to the Supreme Court.

124. On 3 August 2004 the Special Rapporteur sent a joint urgent appeal 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 the human rights defenders regarding **Aba Zer Ahmed Abu Al Bashir**, a lawyer and a human rights defender in Nyala. He was reportedly arrested and detained by the security forces in Nyala. He has reportedly not been formerly charged and was denied any visits by his family or lawyers. Concern was expressed that Zer Ahmed Abu Al Bashir's arrest may be related to his human rights activities and in particular to a written request which he sent to the Governor of South Darfur on 16 July 2004, together with 10 other peace activists, requesting that the conflict in the area come to an end. Concern is heightened by reports that the 10 signatories of the request were also arrested.

125. On 1 December 2004, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning **Hussein Khogali**, editor-in-chief of the independent Arabic-language daily *Alwan*, who was arrested and has been held without charge by police in an undisclosed location since 22 November 2004. Hussein Khogali is believed to be in Kober prison, but neither his family nor his lawyer was allowed to contact him. Police also confiscated the entire print run of his newspaper's 23 November 2004 issue. Mr. Khogali had previously been imprisoned for 17 days in September 2004, and was only released on condition that he ceases writing in his own newspaper. He was told this verbally by members of the National Security Agency (NSA) who, according to a local source, suspected him of continuing to write occasional articles.

Communications from the Government

126. On 29 January 2004 the Government replied to the Special Rapporteur's urgent appeal of 3 July 2003 (E/CN.4/2004/60/Add.1, para. 76) and advised that the verdict and death sentences

passed by the court in the city of Kass, South Darfur State, against Tibin Abdel Rahan Isaag, Alhadi Abaker Hammad, Mohamed Abdel Rahman Ibrahim, Essa Mohamed Adam and Mohamed Abdalla Yahya were nullified due to lack of evidence against the accused.

127. On 7 July 2004, the Government replied to the Special Rapporteurs' joint urgent appeal of 2 April 2004 advising that Ismail Oman and Mohamed Haroun were released in 18 April 2004, while Baroud Sandal Ragab and Abdalla Aldoma (aka Mhomed Abdallah Al Domah) were still detained. The Government advised that they were well treated and have never been subjected to any inhumane or degrading treatment. They had been given access to their family and medical care.

Observations of the Special Rapporteur

128. Although the Special Rapporteur did not receive a reply from the Government regarding Saleh Mahmud Osman, he welcomes the news that Mr. Osman was released from prison on 4 September as the National Security Forces had found no evidence to continue his detention.

129. The Special Rapporteur is advised that Hussein Khogali has been released.

Swaziland

Communications to the Government

130. On 27 August 2004 the Special Rapporteur sent an allegation letter concerning the situation of **Zena Mahlangu**, an 18-year-old student, who disappeared from her school on 9 October 2002. Two men, Qethuka Sgombeni Dlamini and Tulujane Sikhondze, took her to the Ludzidzini Royal Palace, where she was kept incommunicado. Her mother, Lindini Dlamini, filed an application in the High Court for an order directing that Zena Mahlangu be restored to her custody. In an affidavit filed in response to the application, Qethuka Sgombeni Dlamini admitted that he had taken Zena Mahlangu to the Royal Palace, to become the wife of the King, and that he and Tulujane Sikhondze were only obeying to the King's orders. Lindini Dlamini requested the High Court to restore her minor child to her custody. At that stage, the Attorney General reportedly intervened in the case, opposing the application and arguing that the King had the right under customary law to take girls as wives without parental consent. Lindini Dlamini alleged that in terms of the civil law the parent's consent was necessary below the "age of majority", which was 21 years, and recalling that the High Court had already stated that civil law prevailed over Swazi law and custom. The Court consented to the applicant's lawyers delivering court papers to the authorities in charge of the place where Zena Mahlangu was kept. In spite of this, the police refused them access. At the same time, it was reported that the chiefs of staff of the army, the police and the prison services and the Attorney General held a meeting with the judges, telling them that they had to choose between dropping the case or resigning. The judges refused to withdraw from the case, and continued to receive pressure. Despite the ongoing judicial proceedings, Zena Mahlangu was in the meantime presented as the King's fiancée. It was also reported that her mother had to postpone the case due to personal reasons.

131. The allegation letter sent on 27 August 2004 also dealt with the controversy around the validity of the Non-Bailable Offences Order. According the Non-Bailable Offences Order No. 14 of 1993, Magistrates' Courts and the High Court cannot grant bail in any case related to a

number of offences. In June 2001 the Court of Appeal stated that this legislation violated the presumption of innocence and that excluding the jurisdiction of the courts to grant bail in certain cases was against the Constitution (*Professor Dlamini v. The King*). The Government overlooked this judgement and passed a first decree which extended the 1993 Order and restricted the competence of the judiciary (Decree No. 2 of 2001). This decree generated very strong reactions and was therefore replaced by a second one (Decree No. 3 of 2001), which reportedly still maintains the provisions of the Non-Bailable Offences Order. The following year, in the context of the Ray Gwebu and Lucka Nhlanhla Bhembe case, the Court of Appeal ruled that under the Constitution and the 1973 Proclamation, the King had no authority to issue Decree No. 3 of 2001, which was therefore invalid, and ordered that the cases of the two appellants should be referred to the High Court for a decision on bail. The Prime Minister of Swaziland strongly criticized the ruling and said that the Government would not follow it. The disparity between the orders coming from the courts and from the Government generates a chaotic situation in which the courts grant bail to prisoners, while criminal justice officers refuse to release them.

Observations of the Special Rapporteur

132. The Special Rapporteur cautiously welcomes developments towards an improvement of the judicial crisis in Swaziland with the dissolution of the Court of Appeal in 2002. The Court of Appeal has reportedly agreed to try and resume its duties following the Government's indications that it will work to restore the rule of law in the Kingdom and uphold the independence of the judiciary, make improvements to the national justice system and implement and comply with two key court rulings regarding the release of persons who have been granted bail by the courts, provided those persons meet the conditions of bail, and the right of evictees who were forcibly evicted to return to their homes.

Syrian Arab Republic

Communications to the Government

133. On 15 July 2004 the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Arbitrary Detention Working Group, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning **Abdel Rahman al-Shaghouri**. Mr. al-Shaghouri was reportedly arrested at a checkpoint between Qunaytra and Damascus on 23 February 2003 for using the Internet to send articles to his friends. He was allegedly beaten in custody before being transferred to Sednaya prison where he is said to be held incommunicado. On 14 December 2003 Abdel Rahman al-Shaghouri appeared before a State security court which set the date of the next court session for March 2004. He was sentenced to three years' imprisonment by the Supreme State Security Court (SSSC) on 20 June 2004, on charges of "disseminating false information". The charges relate to his e-mailing articles which were mainly from the Akhbar al-Sharq Internet site. The prosecution charge sheet noted that material on the site is considered "detrimental to the reputation and security of the nation" and "full of ideas and views opposed to the system of government in Syria". The sentence was immediately reduced to 2½ years. It is reported that trials before the SSSC invariably fall short of international standards for fair trial. The SSSC allegedly places severe restrictions on the defendant's right to obtain effective legal representation and its verdicts are not subject to appeal before a higher tribunal. In the past, concerns had been made that the SSSC appeared to be neither independent nor impartial. During his trial 'Abdel Rahman al-Shaghouri's

lawyers were allegedly not allowed to see all the court documents relating to the case, although they made repeated requests.

134. On 6 August 2004 the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding **Akhtam Naisse**, a human rights lawyer and President of the Committees for the Defence of Democratic Freedoms and Human Rights in Syria (CDF). Mr. Naisse, who was been charged with “opposing the objectives of the revolution” and “disseminating information aimed at weakening the State” for having published in the CDF annual report denunciations of human rights violations in Syria and a number of press statements by CDF members denouncing human rights violations against Kurdish citizens, was tried on 26 July 2004 at the SSSC and the verdict is pending. A very limited number of international observers were allowed in the courtroom. Mr. Naisse, who needs daily medical treatment and has been kept in solitary confinement since 13 April, was allegedly not allowed to consult a lawyer in private or to communicate with his family. Of particular concern is that the SSSC is outside the ordinary criminal justice system, is accountable only to the Minister of the Interior and is not bound by the rules of the Code of Criminal Procedures; its verdicts are not subject to appeal. The information received suggests that Aktham Naisse's prosecution is motivated by his human rights activities, particularly the publications and dissemination of information on respect for human rights in Syria, activities which are legal under numerous international human rights instruments.

Communications from the Government

135. On 20 September 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 6 August 2004 and advised that Aktham Na'isa had been arrested on 13 April 2004 and sent to trial before the Higher State Security Court, in accordance with relevant laws, for disseminating false and exaggerated reports (a petition calling for political reform with fictitious names or names of well-known people used without their knowledge to found an unauthorized secret association) likely to harm Syria's relations with neighbouring States. The State Security Court held two sessions, on 26 July and 16 August, in the presence of a number of Syrian and Arab lawyers and representatives from the European Union and the United States Embassy. On 16 August, Mr. Na'isa was released on bail pending trial, which was postponed until 24 October.

136. On 1 November 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 15 July 2004 and advised that Abd al-Rahman al-Shaghuri had been arrested on 23 March 2003 for using the Internet to disseminate to persons in the country and abroad articles that were detrimental to the country's security and reputation. He was arraigned before the Supreme State Security Court on 30 June 2003.

Observations of the Special Rapporteur

137. The Special Rapporteur thanks the Government for replying to his communications. With respect to the trial of Aktham Naisse, the Special Rapporteur understands that it was scheduled to resume in January 2005 but has been postponed to April 2005. He wishes to express his concern regarding the delay of this trial.

Thailand

Communications to the Government

138. On 17 March 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question torture concerning **Somchai Neelahphaijit**, Chairman of the Muslim Lawyers Association and human rights defender who has reportedly been missing since 11 March 2004. He was allegedly due to attend a meeting on 12 March at the Chalina Hotel in Bang Kapi district and was also due to appear in court for a case in Narathiwat province on 15 March. He allegedly did not attend either of these events and his family has reportedly not had any contact from him. On 16 March his wife filed a complaint with the Bang Yikhan police. Prior to his alleged disappearance, Mr. Neelahphaijit had reportedly received anonymous threatening phone calls, including one call from a senior official informing him that he was at the top of the military blacklist. There was concern that Mr. Neelahphaijit may have been targeted for his human rights work, including his involvement in petitioning 50,000 signatures nationwide to call for an end to martial law in southern Thailand, as well as his work to defend Muslim suspects against terrorism and treason charges.

Communications from the Government

139. On 30 March 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 17 March 2004. The Government assured the Special Rapporteurs that the Royal Thai Police had utilized all of its available means to locate Somchai Neelahphaijit. On 18 March 2004 an independent committee under the Chairmanship of the Director-General of the Department of Special Investigation, Ministry of Justice, was established by the Prime Minister to ensure that full redress is given to Mr. Neelahphaijit. Three subcommittees on information analysis, forensic evidence and investigation were also set up to assist the committee.

140. On 6 August 2004 the Government reiterated the importance it gives to the case of Somchai Neelahphaijit and the proceedings concerning the case. The State Prosecutor's office advised that arrest warrants were issued against five police officers charged with robbery and coercion through death threats against Mr. Neelahphaijit, who was last seen on 12 March 2004. These charges may change as more evidence appears. Nearly 100 witnesses will testify at the trial. Hearings were scheduled to take place between August 2004 and December 2004.

Observations of the Special Rapporteur

141. The Special Rapporteur thanks the Government for providing an update on the status of this case and would appreciate being informed of the outcome of the trial.

Tunisia

Communication reçue du Gouvernement

142. Le 9 mai 2004, le gouvernement a répondu à l'appel urgent envoyé par le Rapporteur spécial le 22 juillet 2003 relatif aux atteintes présumées portées à la liberté de réunion en Tunisie, ainsi que sur l'agression dont aurait fait l'objet **Radhia Nasraoui**, avocate et présidente de l'Association de la lutte contre la torture en Tunisie. Le gouvernement a indiqué que, concernant la supposée agression dont il est question, le 16 juillet 2003 Mme Nasraoui a déposé une plainte contre inconnu pour agression et violence physique perpétrée sur sa personne. Saisi de l'affaire, le Parquet, en vertu de l'article 30 du code de procédure pénale, a ordonné le 22 juillet 2003 une commission rogatoire à la direction de la Sûreté au district de Tunis pour instruction et information. L'affaire suit normalement son cours.

Observations du Rapporteur spécial

143. Le Rapporteur spécial est fortement préoccupé par les informations qu'il a reçues selon lesquelles le système judiciaire tunisien ne serait pas indépendant, souffrant de graves interférences du pouvoir exécutif dans l'administration de la justice. À ce propos, le Rapporteur spécial rappelle qu'il a envoyé une demande de visite au Gouvernement tunisien le 20 janvier 2004 et regrette de n'avoir pas reçu de réponse à ce jour.

Turkey

Communication to the Government

144. On 6 August 2004 the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the question of torture concerning **Abdulhekim Gider**, a lawyer, **Abdullah Gündogdu**, **Tahsin Atak**, and **Ihsan Gülmek**. Reportedly, on 30 July 2004, police detained Abdullah Gündogdu, Tahsin Atak and Ihsan Gülmek in the Pervari district of Siirt province, on suspicion of aiding and abetting an armed organization, the Kurdistan People's Congress (Kongra-Gel), formerly known as the Kurdistan Workers' Party (PKK). Their lawyer, Abdulhekim Gider, came to meet with them at the police station in Pervari on 1 August. While he was waiting, a police officer asked him, "How can you defend traitors? This lot are terrorists... Haven't you got a conscience?" When Abdulhekim Gider saw one of his clients, Abdullah Gündogdu, he appeared exhausted and frightened and could not stand upright. He said that he had not been given any food since the day he was detained and had been stripped naked and sprayed with cold pressurized water for 2½ hours, especially in the area of his kidneys. He said that he had also had his testicles squeezed and been beaten about the head. When the lawyer saw Tahsin Atak and Ihsan Gülmek, they said that they had not been given food, and they both appeared tired and frightened. Tahsin Atak later complained that he had been severely beaten on his body and legs. When his lawyer met with him in prison, there was still blood on his legs and socks from the beatings. That day, Mr. Gider tried to lodge a complaint that Abdullah Gündogdu had been tortured, but the Pervari prosecutor was reluctant and allegedly tried to persuade him not to do so. When he returned to the prosecutor's office on 2 August, a police officer reportedly

pointed his rifle at the lawyer and said to another officer, "I might accidentally pull the trigger". When Mr. Gider went back to the police station to meet with his clients the same day, he claimed that he was prevented from entering by seven or eight police officers, including the local police chief, who surrounded him and insulted and threatened him, apparently because he had lodged a complaint of torture against them. After he appealed to a senior police officer who had come to the station, Mr. Gider was allowed to meet with his client's who were all remanded in Siirt prison. As the lawyer left the police station, one of the police officers who had earlier threatened him told him, "Your job is not going to be easy any more". When Mr. Gider asked what this meant, the police officer told him, "Go away! I don't want to see you again. Bad things happen, and they are going to happen." Police have pressured the detained men's relatives to change their lawyer, and police officers in Pervari are reported to have threatened Mr. Gider since then. Groups of police have followed him in the street, and police vehicles have patrolled conspicuously outside buildings where he has been conducting meetings with the families of his clients.

Communications from the Government

145. On 20 January 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 19 December 2003 (E/CN.4/2004/60/Add.1, para. 92) concerning the situation of **Sezgin Tanrikulu, Sabahattin Korkmaz and Habibe Deyar**. The Government advised that the three men were acquitted on 24 December 2003. The Government also remarked that the root cause of internal displacement in Turkey had been the scourge of terrorism, mainly coming from the PKK/KADEK, and enclosed an information note with respect to the issue of internal displacements in Turkey.

146. On 9 February 2004 the Government responded to the Special Rapporteurs' joint allegation letter of 23 May 2002 (E/CN.4/2003/65/Add.1, para. 219) pertaining to the case of **Salih Yilar**. An investigation was initiated upon the complaint of Mr. Yilar by the Public Prosecutor's Office in Diyarbakir, and following the investigation a lawsuit was filed against two policemen at the Diyarbakir Serious Crimes Court No. 1. Mr. Yilar was examined by the Forensic Institute, which indicated that no traces of electric shocks were found on his body, as Mr. Yilar had alleged. During the hearings Mr. Yilar stated that the two accused policemen were not the ones who had taken him into custody. Furthermore, there had been no witness to the circumstances that had caused the injuries on Mr. Yilar when he was found on 14 May 2002 by security forces. Therefore, the court acquitted the two policemen.

147. On 14 October 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 6 August 2004 pertaining to the cases of **Abdulhekim Gider, Abdullah Gündogdu, Tahsin Atak, and Ihsan Gülmek**. The Government advised that Mr. Gündogdu, Mr. Atak and Mr. Gülmek were suspected of committing crimes of aiding and abetting the PKK/KONGRA-Gele terrorist organizations and on 30 July, under instruction of the Public Prosecutor, were detained at Pervari Police Station. In line with relevant legislation regulating the detention of suspects, they underwent medical examinations and were informed of their legal rights. On 3 August the suspects were interrogated by the Public Prosecutor. The Criminal Court of Peace at Pervari upheld their arrest, committed them to the prison in Siirt and legal proceedings were commenced. Mr. Gider, their lawyer, visited the detainees on 1 and 2 August but did not appear for the interrogations despite being informed of the time and venue. Before his second visit

Mr. Gider refused to present his identification and an argument broke out with the security officers, during which Mr. Gider threatened the officers.

United Kingdom of Great Britain and Northern Ireland

Communications to the Government

148. On 12 February the Special Rapporteur sent an allegation letter concerning the reported reluctance of the Government to publish Judge Cory's reports regarding the murders of **Rosemary Nelson** and **Patrick Finucane**. The former Special Rapporteur had closely followed and reported on the developments of a number of Northern Ireland defence lawyers' cases since 1997 and in his 2003 report to the Commission (E/CN.4/2003/65/Add. 1, para. 230) noted that he had received a response from the Secretary of State for Northern Ireland, John Reid, who made assurances that the Government was committed to investigate and conduct a review of the murders of Patrick Finucane, Rosemary Nelson and **William Stobie**. On 14 January 2004 an application for judicial review was filed on behalf of Mr. Finucane in an effort to have Judge Cory's report published; applications on behalf of the other cases may also join this action. The hearing was reportedly set for 1 March 2004. The Special Rapporteur called upon the Government to publish the four reports submitted by Judge Cory, to establish public inquiries in all four of these cases, as recommended by Judge Cory, to consult with the families concerned regarding the terms of reference of public inquiries and to disclose the full unedited version of Judge Cory's reports to the families concerned.

149. On 23 September 2004 the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on extrajudicial, summary or arbitrary executions to welcome the Government's action in April 2004 to publish the four reports. Regarding recent developments in the Patrick Finucane case, whereby Ken Barrett pleaded guilty to the murder and was sentenced on 16 September. Since the criminal proceedings in this case have now concluded, the Government is encouraged to commence with a public inquiry without delay and liberally apply the terms of reference referred to in Justice Cory's report so there can be a full and open investigation into the allegations of State collusion in the death of Mr. Finucane. It is understood that the Government made the decision to postpone the establishment of an inquiry due to ongoing criminal proceedings; however, in the case of Mr. Finucane, the proceedings are now exhausted. The Special Rapporteurs inquired if the Government intends to hold a public inquiry pursuant to the 1921 Tribunals of Inquiry (Evidence) Act and what the expected date of commencement is.

Communications from the Government

150. On 11 March 2004 the Government sent a communication expressing its commitment to publish Justice Cory's reports as soon as certain legal issues were solved. On 3 May 2004 the Government sent copies of Justice Cory's published reports.

151. The Government sent a reply to the Special Rapporteurs' joint allegation of 23 September 2004 and a summary of the reply will be included in next year's report.

Observations of the Special Rapporteur

152. The Special Rapporteur is aware that the Government intends to introduce new legislation, known as the Inquiries Bill, which the Government says is now required before inquiries such as the Patrick Finucane inquiry can be held so that the inquiry takes into account the public interest, including the requirements of public security. The Special Rapporteur is, however, aware and concerned about further delays that may be encountered, in particular with respect to the cases referred in the Special Rapporteur's communications, as it had been recommended to the Government since October 2003 that inquiries be held on a number of these cases.

153. The Special Rapporteur welcomes the decision of the House of Lords in December 2004 that in a case brought by detainees being held indefinitely without charges in Belmarsh prison in London, measures taken under the 2001 Anti-Terrorism Act were incompatible with provisions of the European Convention on Human Rights concerning the right to a fair trial. The Special Rapporteur urges the Government to modify the legislation in order to bring it into line with international principles.

United States of America

Communications to the Government

154. On 29 April 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants concerning the situation of **Oswaldo Netzahualcóyotl Torres Aguilera**, a Mexican national who reportedly was scheduled to be executed in Oklahoma on 18 May 2004. He was sentenced to death in 1996 for the 1993 murders of Maria Yanez and her husband, Francisco Morales. Oswaldo Torres' execution date remained set despite the International Court of Justice (ICJ) ruling in the case of *Avena and other Mexican nationals* (31 March 2004, General List No. 128), a lawsuit brought by Mexico on behalf of its nationals arrested, allegedly denied their consular rights and sentenced to death in the United States of America. The ICJ ruled that the United States of America had breached its international obligations under the Vienna Convention on Consular Relations and that it must provide effective judicial review and reconsideration of the impact of the violations on the cases of the foreign nationals involved. The means for review and reconsideration are to be determined by the United States of America; however, the ICJ further noted that the clemency process was not a satisfactory forum. Oswaldo Torres is reportedly due to have a clemency hearing before the Oklahoma Pardon and Parole Board on 7 May 2004. Further, the ICJ found that the United States of America had violated all of its obligations under article 36 of the Vienna Convention, including Mexico's right to be able to assist with Mr. Torres' legal representation. The ICJ noted with "great concern" that an execution date had been set for Oswaldo Torres, whose appeals in the domestic courts had been exhausted. At the time of his arrest, Oswaldo Torres was 18 years old, without a lawyer, and had had minimal contact with the United States criminal justice system. He was reportedly registered with the immigration authorities as a resident alien, which would have become known to the police when they conducted a routine background check upon his arrest. Despite this, the authorities allegedly never informed him of his rights under the Vienna Convention. Oswaldo Torres was represented by a court-appointed lawyer (but his lawyer allegedly failed to raise this issue at the trial or appeal stage), and he had already been convicted

and sentenced to death before the Mexican authorities learned of the case in 1996 when his family contacted the Mexican consulate for help. It is alleged that timely assistance from the Mexican consulate could have prevented the imposition of the death penalty, either by persuading the prosecutor not to seek a death sentence or by assisting the defence at the trial. Osvaldo Torres was arrested along with George Ochoa and tried jointly on charges of first-degree burglary and first-degree murder with malice aforethought. On the latter charge, the prosecution had to prove beyond a reasonable doubt that each defendant intended to kill the victims. Reportedly, one of the State's witnesses, a 15-year-old girl, testified that she had seen a man with a gun in the company of George Ochoa before the crime. However, the gun she described at the trial was never found and was not the weapon used in the murders. This witness has since recanted her testimony and said that she was coerced by the prosecution into saying that she had seen a gun. Despite her affidavit, the Oklahoma Court of Criminal Appeals relied upon her trial testimony in upholding Osvaldo Torres' conviction for first-degree murder with malice aforethought. The 10th Circuit Court of Appeals has in turn upheld the conviction and death sentence, despite acknowledging that the evidence against Mr. Torres is "susceptible to interpretation".

155. On 2 July 2004 the Special Rapporteur sent a joint allegation letter with 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 concerning the situation of **Feroz Ali Abbasi** a United Kingdom national, **Moazzam Begg** a United Kingdom/Pakistani national, **David Hicks**, an Australian national, **Salim Ahmed Hamdan**, a Yemeni national, **Ali Hamza Ahmed Sulayman al Bahlul**, a Yemeni national, and **Ibrahim Ahmed Mahmoud al Qosi**, a Sudanese national, who are all in solitary confinement in United States military custody in Guantánamo Bay, Cuba. They are reportedly the only detainees so far made subject to the Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism signed by President Bush in November 2001. Those held under the Order can reportedly be detained indefinitely without charge or trial. They can also be tried by military commissions whose verdicts, including death sentences, cannot be appealed in any court. Three of them, Ali Hamza Ahmed Sulayman al Bahlul, Ibrahim Ahmed Mahmoud al Qosi and David Hicks, have allegedly been charged with conspiracy to commit war crimes. No dates for their trials have been set, but reportedly David Hicks may face a military commission in August 2004. All six men are believed to be held in Camp Echo, the part of the Guantánamo facility where pre-commission detainees are held. Each man is allegedly held for 23-24 hours a day in a windowless cell with no possibility of communicating with other detainees. Prolonged isolation in conditions of reduced sensory stimulation can reportedly cause severe physical and psychological damage. In a statement signed on 31 March 2004, psychiatrist Dr. Daryl Matthews, who visited Guantánamo in 2003 at the invitation of the Pentagon, stated that the solitary confinement places the detainees "at significant risk for future psychiatric deterioration, possibly including the development of irreversible psychiatric symptoms". The announcement that these six detainees were subject to the Military Order reportedly came on 3 July 2003, and they were then transferred to Camp Echo. Salim Ahmed Hamdan, who has been in custody since November 2001, was transferred to Camp Echo in early December 2003, while Feroz Abbasi and Moazzam Begg are believed to have been held there longer. In a separate development, Ali Hamza Ahmed Sulayman al Bahlul's military lawyer said on 22 June that he had not met with his client for two months because of delays obtaining security clearance for an interpreter. Concerns have been expressed that any guilty pleas or detainee testimony before the military commissions could be the result of the coercive nature of the conditions in which the detainees

have long been held without any legal process. The conditions in Camp Echo are likely to leave the detainees there even more susceptible to psychological coercion and false confessions. According to Dr. Matthews's statement, Salim Ahmed Hamdan has said that he has considered confessing falsely to ameliorate his situation. Also, a legal petition filed in federal court on behalf of Salim Hamdan's military lawyer allegedly claims that the authorities have told the prisoner that he would remain in custody until such time as he wished to plead guilty to some unspecified crime against the United States in a manner satisfactory to the authorities, and that his appointed defence counsel is not authorized to mount any legal defence to either his detention or the circumstances of his incarceration, but rather is available only to assist him in pleading guilty to some unspecified offence. There is further concern that the military commissions will allow for the admission of evidence based on statements allegedly obtained without regard to national and international standards of due process. According to a February 2002 memorandum from the Justice Department to the Pentagon, made public on 22 June 2004, "incriminating statements may be admitted in proceedings before military commissions even if the interrogating officers do not abide by the requirements of Miranda [the Supreme Court decision concerning the rights of suspects and the conduct of interrogators]" since the military commissions are subject only to the President's directives and powers as Commander in Chief of a military campaign.

156. On 30 June 2004, a copy of a statement¹ (originally issued as part of a press release on 25 June 2004) by the Special Rapporteur jointly with the other participants at the eleventh annual meeting of the special rapporteurs/representatives, independent experts and chairpersons of the working groups of the special procedures of the Commission on Human Rights and of the advisory services programme was sent. The text is reproduced below:²

"Protection of human rights and fundamental freedoms in the context of anti-terrorism measures

"The Special Rapporteurs/representatives, independent experts and chairpersons of the working groups of the Special Procedures of the Commission on Human Rights and of the Advisory Services Programme, meeting in eleventh annual session in Geneva from 21 to 25 June 2004, reiterate the concerns expressed in their statement of June 2003 regarding the serious incidence that certain measures taken in the name of the fight against terrorism may have on the enjoyment of human rights and fundamental freedoms.

"They once again strongly voice their unequivocal condemnation of terrorism in all its forms. At the same time, they reaffirm their individual and collective determination to monitor, each within the framework of his or her mandate, those policies, legislation, measures and practices developed by States in the name of the fight against terrorism, with a view to ascertaining that they are consistent with international human rights standards.

"Bearing in mind a number of recent developments that have seriously alarmed the international community with regard to the status, conditions of detention and treatment

¹ A copy of this statement was also sent to the Governments of Afghanistan and Iraq on 30 June 2004.

² The text reproduced is the first part of a three-part press statement, the other two parts being on violations of human rights and fundamental freedoms in the occupied Palestinian territories and the situation of migrants.

of prisoners in specific places of detention, they express their unanimous desire that the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leandro Despouy, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Mrs. Leila Zerrougui, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Mr. Theo van Boven, visit, together and at the earliest possible date, those persons arrested, detained or tried on grounds of alleged terrorism or other violations, in Iraq, Afghanistan, the Guantanamo Bay military base and elsewhere, with a view to ascertain, each within the confines of their mandate, that international human rights standards are properly upheld with regard to these persons, and also to make themselves available to the authorities concerned for consultation and advice on all issues within their areas of competence. They further express the wish that they present the outcome of their approaches and visits to the sixty-first session of the Commission on Human Rights.”

157. On 22 November 2004, the Special Rapporteur sent a joint allegation letter with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, 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 acknowledging receipt of and thanking the Government for its letter of 9 November. The offer to organize a briefing in Washington DC by United States Government officials to discuss detention practices was noted, and they welcomed the Government’s initiative to begin a dialogue on this matter. It was a unified decision of the special procedures of the Commission on Human Rights to visit, at the earliest possible date, those persons arrested, detained or tried on grounds of alleged terrorism or other violations in Iraq, Afghanistan, the Guantánamo Bay military base and elsewhere, with a view to ascertaining, each within the confines of his/her respective mandate, that international human rights standards are properly upheld with regard to these persons, and also to make themselves available to the authorities concerned for consultation and advice on all issues within their areas of competence. Owing to the gravity of the allegations, only such a visit could properly address the concerns of the Commission and the international community at large. Against this background, if the suggested briefing were to lead to and serve as preparation for the requested visit, it would be a very positive preliminary step. It would be appreciated if the meeting could take place in Geneva.

Communications from the Government

158. On 3 September 2004 the Government provided an interim response to the Special Rapporteurs’ joint communication of 2 July 2004 regarding allegations relating to six detainees at Guantánamo Bay and advised that the reply required coordination with a number of government agencies.

159. On 9 November 2004 the Government replied to the statement made by participants at the eleventh meeting of the special procedures. Stating it is aware of the concerns and interests of the Special Rapporteurs and indicating that internal government reviews were taking place with respect to aspects of United States detention policy. Several reports had been completed and made public. Although the Government advised that it was not able to make provision for the visits as requested, it was willing to provide a briefing in Washington, DC by officials of the United States Government, including representatives of the Department of Defence, to discuss

matters related to detention practices; staff would be in contact to explore further possible modalities and logistics for such a briefing.

Observations of the Special Rapporteur

160. Although the Special Rapporteur did not receive a response to two joint urgent appeals sent in 2003 to the Government regarding **Darnell Williams** (E.CN.4/2004/60/Add.1, paras. 101-102), he welcomes the news that on 2 July 2004 Indiana Governor Kernan granted clemency and commuted Mr. Williams' death sentence to life imprisonment without the possibility of parole.

161. Concerning the joint urgent appeal sent on 29 April 2004, the Special Rapporteur regrets that the Government did not provide a response. However, he notes with satisfaction that, according to information received, the death sentence of Osvaldo Torres has been commuted to life imprisonment.

162. On 8 November 2004, a United States District Judge suspended the military commission proceedings at Guantánamo Bay with respect to Salim Ahmed Hamdan. He ordered that unless and until a "competent tribunal", as required under article 5 of the Third Geneva Convention, determined that Mr. Hamdan was not entitled to prisoner of war status, he must be accorded the full protections of a prisoner of war. The Government has sought an expedited appeal and it is probable that this case will be heard by the Supreme Court.

163. While the Special Rapporteur welcomes release of a few Guantánamo detainees, he remains very concerned about the more than 500 detainees who have spent more than three years in legal limbo. The Special Rapporteur takes note of two important judicial decisions on the issue of enemy combatant detainees at Guantánamo Bay. Two Supreme Court decisions were issued in 2004, the *Rasul* case, in which the court ruled that United States courts had jurisdiction to hear cases of Guantánamo detainees, and the *Hamdi* case, where the Court held that those detained by the United States must be given the opportunity to contest their detention before a neutral decision maker.

Venezuela

Comunicación enviada al Gobierno

164. El 25 de noviembre de 2004, el Relator Especial envió un llamamiento urgente en relación con la situación de **Danilo Anderson**, fiscal ambiental, quien habría sido asesinado. De acuerdo con las informaciones recibidas, el 19 de noviembre 2004, el Sr. Anderson falleció por el estallido de una bomba que fue colocada en su camioneta. Danilo Anderson estaba encargado de la investigación del fallido golpe de Estado que tuvo lugar en abril de 2002 en Venezuela.

Respuestas del Gobierno

165. Mediante comunicación del 19 de marzo de 2004, el Gobierno proporcionó información en relación con la comunicación enviada por el Relator Especial el 18 de octubre de 2003 concerniente al proyecto de Ley Orgánica del Tribunal Supremo de Justicia sometido a la Asamblea Nacional para su discusión definitiva, y en relación con lo acaecido el

23 de septiembre de 2003 en la sede de la Corte Primera de lo Contencioso Administrativo. En lo que concierne a la constitucionalidad de algunas disposiciones del proyecto de ley, el Gobierno venezolano afirmó que se trataba de un proyecto de ley, todavía en etapa de deliberación en la Asamblea Nacional. Asimismo, el Gobierno afirmó que independientemente de cual fuera el destino final del texto, el referido acto legislativo pertenece al dominio de la soberanía nacional y del derecho de autodeterminación del pueblo venezolano que corresponde tan sólo a éste. En relación a los hechos ocurridos el 23 de septiembre de 2003, el Gobierno negó el uso de arma alguna en la sede de la Corte Primera de lo Contencioso Administrativo.

166. Posteriormente, mediante comunicación de 14 de julio de 2004, el Gobierno venezolano remitió al Relator Especial un texto con comentarios explicativos de la nueva Ley Orgánica del Tribunal Supremo de la República de Venezuela. De acuerdo con dicho comentario, a partir de la aprobación de la Ley, el Tribunal Supremo de Justicia asume un doble rol al continuar como máxima instancia judicial y asumir a la vez el papel de órgano de dirección, gobierno y administración del poder judicial. La asunción de este último rol y la consiguiente eliminación del Consejo de la Judicatura obedecerían a la inoperancia de éste último. Asimismo, al asumir ambos roles se pretende conseguir la formación armónica y coherente en las políticas públicas del ámbito judicial. En referencia a las críticas recibidas por la Ley, el Gobierno afirmó que, en lo que al aumento del número de magistrados se refiere, éste obedece a la necesidad de tratar el volumen de casos que ventila el Tribunal Supremo, volumen que verá aún más incrementado al asumir la nueva función de administración y control del poder judicial. En cuanto al modo de selección de los magistrados, el Gobierno rechazó las críticas señalando que en el proceso interviene una pluralidad de órganos y sólo en último término, en caso de no lograr un consenso anterior, se procedería al nombramiento por vía de pronunciamiento mayoritario del Parlamento.

Observaciones del Relator Especial

167. El Relator Especial expresa su preocupación en relación con la adopción de la Ley Orgánica del Tribunal Supremo de la República de Venezuela en mayo 2004, que amplió la composición del Tribunal Supremo de 20 a 32 magistrados y permitió a la coalición al poder en la Asamblea Nacional nombrar 12 magistrados, obteniendo así una gran mayoría de magistrados en el Tribunal Supremo. La Ley también otorga a la Asamblea Nacional la facultad de anular las actuales designaciones de magistrados, y elimina el Consejo de la Judicatura, órgano independiente de dirección, gobierno y administración del poder judicial. El Relator Especial lamenta que la adopción y aplicación de esta Ley, contraria a la Constitución venezolana y a los principios del derecho internacional, ha creado un poder judicial fuertemente politizado. Por tanto, insta al Gobierno a tomar urgentemente medidas para restablecer la independencia del poder judicial venezolano.

Yemen

Communications to the Government

168. On 28 May 2004 the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding **Fuad 'Ali Mohsen al-Shahari**, who is reportedly at risk of imminent execution if the President ratifies his death sentence, which was upheld by the Supreme Court in March 2004. Concern was expressed that trial proceedings may have fallen short of international fair trials standards. According to the

information received, at the beginning of May 1996, Fuad 'Ali Mohsen al-Shahari met with two Political Security officers concerning a dispute with his brother. The officers reportedly reacted violently to his intervention and started firing their guns at him. On 29 May 1996, a military car reportedly blocked his way and armed men forced him out of his car at gunpoint, arrested him but released him shortly afterwards. It is reported that Fuad 'Ali Mohsen al-Shahari informed the General Prosecution of the incident, but no action was taken. That same day, men reportedly surrounded him and tried to arrest him without a warrant, allegedly threatening him with death. A gun battle followed, the details of which remain unclear, during which Captain Mohammed al-'Ameri from the Political Security Department was killed and at least one shot was fired by Fuad. On 12 November 1996 Fuad 'Ali Mohsen al-Shahari was found guilty of the premeditated murder of Captain Mohammed al-'Ameri and was sentenced to death. On 20 September 1997 the Court of Appeal upheld the sentence. On 20 May 1999, the case went before the Supreme Court and was sent back to the Court of Appeal. It has been alleged that his trial allegedly failed to meet international standards of fairness. For instance, he was convicted on the basis of a confession which is said to have been extracted under torture while he was held incommunicado for one month. Four versions of his confession were reportedly included in the charge sheets and the forensic evidence was contradictory. It is further reported that he was not represented by lawyers throughout the legal proceedings against him, that defence witnesses were not allowed to testify and that certain pieces of evidence were disregarded. It is also alleged that a personal dispute between Fuad 'Ali Mohsen al-Shahari and the prosecutor may have compromised the prosecutor's impartiality. Finally, it is reported that the death sentence was confirmed by the Commercial Division of the Supreme Court and not the Criminal Division of the Court.

169. On 23 December 2004, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the question of torture concerning **Ludo Mouafo, Pierre Pengou, Baudelaire Mechoup** and **Zacharie Ouafu**, all nationals of Cameroon. Reportedly, they had been held incommunicado in the Political Security Organization Prison in Sana'a since they were arrested in a raid of the Plaza Suites Hotel in March 1995. The reason for their arrest is unknown. It is reported that they are being detained in an underground cell in harsh conditions, including, among other things, inadequate ventilation, food and access to health services. They have been denied contact with family, as well as visits by lawyers, doctors and human rights organizations. Lack of access to the prisoners has prevented petitions from being brought on their behalf, as the prisoner's consent is required.

Zimbabwe

Communication to the Government

170. On 12 February 2004 the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding the resignation of Judge **Michael Majuru**, President of the Administrative Court, around 15 January 2004, after allegedly being subjected to severe pressure and harassment from government officials following his ruling to lift a ban on *The Daily News*, the country's only independent daily newspaper. It is alleged that the Government threatened Judge Majura with an investigation following claims by the Government that he had demonstrated bias towards the Associated Newspapers of Zimbabwe, publishers of *The Daily News*. In October 2003, Judge Majuru ruled that the State-run Media Commission, which issues the licences required by newspapers and journalists in Zimbabwe, was biased and he ordered that the body be replaced by

an impartial one, effectively revoking the Commission's ban on *The Daily News*. The Government reportedly ignored the court ruling and *The Daily News* appealed. The appeal was heard by another Administrative Court Judge, Justice Selo Nare, who on 19 December 2003 upheld Judge Majuru's ruling and *The Daily News* resumed printing in January 2004. It is reported that Judge Majuru is the seventh judge since 2001 to have either been forced to resign from the bench or targeted by the Government as a result of rendering judgements against the Government.

Communication from the Government

171. On 18 February 2004 the Government replied to the Special Rapporteurs' joint allegation letter of 12 February 2004 and advised that Judge Majuru had resigned not because of any form of harassment but because he was not prepared to face an inquiry into remarks he made before he delivered judgement in the Association Newspapers of Zimbabwe matter. The inquiry sought to establish the circumstances in which former Judge Majuru is said to have communicated to certain people in a pub the verdict he was going to deliver in this case. Judge Majuru decided to resign and has migrated to South Africa. The Government stated that the sequence of events received by the Special Rapporteur is incorrect. According to the Government, *The Daily News* could not have appealed since it is not possible to lodge an appeal with a judge of the same court in respect of a judgement delivered by another judge of the court. The Government stated that Judge Majuru never delivered the judgement since he removed himself after the inquiry into his conduct had been launched. The judgement was then delivered by Justice Selo Nare. In addition, those judges who had exercised their right to resign from the bench did so voluntarily for various reasons and were never forced into doing so.
