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

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue

Addendum

Summary of cases transmitted to Governments and replies received*

* The present report is circulated as received.

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I. Introduction

1. The present document is submitted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, to the Human Rights Council, pursuant to Human Rights Council resolutions 5/1 and 16/4. The document provides summaries of the communications on specific cases addressed by the Special Rapporteur to States, as well as summaries of the replies by States received and their observations thereon.
2. The cases raised by the Special Rapporteur in this addendum include communications sent between 20 March 2010 and 31 March 2011. The addendum contains summaries of responses received from States until 13 May 2011. Most of the responses by States refer to communications sent by the Special Rapporteur between March 2010 and March 2011. However, some of the responses are to cases addressed by him in earlier reporting periods. While the summaries of these responses are included in this report, the summaries of the cases to which they refer will be found in the Special Rapporteur's reports from preceding years (see A/HRC/14/23/Add.1, A/HRC/11/4/Add. 1 and A/HRC/7/14/Add. 1 covering the previous three years, or visit <http://www2.ohchr.org/english/issues/opinion/annual.htm> to access all previous communication reports).
3. For ease of reference, cases have been grouped by country, with countries listed alphabetically according to their names in English.

II. Summary of cases transmitted to Governments and replies received

Algeria

Appel urgent

4. Le 19 avril 2010, la Rapporteuse spéciale, conjointement avec le Président du Groupe de Travail sur les Disparitions Forcées ou Involontaires et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé un appel urgent concernant les faits suivants : le dimanche 11 avril 2010, de nombreuses familles de disparus, arborant des pancartes, des photos de disparus ainsi que des foulards, se seraient réunies devant le Ministère de la justice pour manifester leur colère suite aux déclarations alléguées du Président de la Commission Nationale Consultative pour la Promotion et la Protection des Droits de l'Homme (CNCPPDH), selon lesquelles l'établissement de la vérité sur le sort des disparus serait irréalisable. Il a également été rapporté que trois membres de l'organisation non-gouvernementale SOS Disparu(e)s auraient essayé d'accéder au Ministère pour réitérer une demande d'audience et transmettre le message des familles demandant l'ouverture d'enquêtes effectives sur le sort des disparus, mais elles auraient été interceptées à l'entrée du bâtiment par un policier de service et des agents en civils qui leur auraient interdit de passer et leur auraient ordonné de déposer les photos et le foulard de l'association, ce qu'ils auraient refusé de faire. Ensuite, de nombreux agents en civil se seraient introduits parmi les manifestants et auraient commencé à disperser brutalement la foule, malmenant et bousculant les femmes et les personnes âgées présentes dans le rassemblement.
5. Des craintes ont été exprimées quant à l'usage excessif de la force par les forces de l'ordre contre ces manifestants pacifiques, et ce dans l'exercice de leur droit à la liberté d'opinion et d'expression et à la liberté de rassemblement pacifique.

Réponse du Gouvernement

6. Dans une lettre en date du 25 mai 2010, le Gouvernement a indiqué que dans la matinée du 11 avril 2010, un groupe de plusieurs personnes, abordant pancartes et photos, s'est regroupé devant le siège du Ministère de la Justice.
7. Ce rassemblement a été canalisé par les fonctionnaires chargés de l'ordre public jusqu'au moment où le groupe a investi la voie publique mitoyenne du Ministère, occasionnant un encombrement de la circulation et bloquant ainsi, toutes les voies de communication des alentours.
8. Les agents de l'ordre public ont alors invité les personnes ainsi regroupées à se disperser. Ce que la majorité d'entre eux a finalement accepté, sauf un petit groupe de quelques personnes qui ont persisté dans leur attitude.
9. Par contre et contrairement à ce qui a été allégué, les personnes qui se sont regroupées devant le Ministère n'ont jamais subi de mauvais traitements de la part des agents de l'ordre public lesquels, dans un premier temps, les ont simplement invités à se disperser puis, devant le refus d'obtempérer, ont procédé à leur dispersion.
10. Il convient de noter, par ailleurs, qu'aucune personne prétendant avoir subi une quelconque violence n'a déposé de plainte devant quelque autorité que ce soit. C'est pourquoi, aucune enquête n'a été ouverte à ce sujet.
11. Il y a lieu de souligner, enfin, que la question des disparus a fait l'objet d'un mémorandum de référence adressé par le Gouvernement algérien aux Haut Commissariat des Nations Unies aux Droits de l'Homme, relatif à l'irrecevabilité des communications introduites devant le Comité des droits de l'homme, en rapport avec la mise en œuvre de la charte pour la paix et la réconciliation nationale.

Lettre d'allégation

12. Le 11 mai 2010, la Rapporteuse spéciale, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé une lettre d'allégation concernant la situation de MM. **Mustapha Benfodil, Adlane Meddi, Saïd Khatibi et Hakim Addad**. MM. Benfodil, Meddi et Khatibi sont les animateurs du groupe « Bezzef » qui dénonce les atteintes aux libertés en Algérie à travers des actions publiques pacifiques et son réseau social sur internet. M. Addad est le Secrétaire général du Rassemblement Action Jeunesse (RAJ), une association socioculturelle ayant pour objectifs la sensibilisation et la mobilisation des jeunes aux problèmes sociaux, ainsi que la promotion d'activités culturelles et des droits de l'homme.
13. Selon les informations reçues, le 3 mai 2010, à l'occasion de la Journée mondiale de la liberté de presse, un rassemblement pacifique aurait été organisé par Bezzef devant les locaux de la télévision nationale (Entreprise nationale de télévision-ENTV) à Alger afin de revendiquer le droit à la liberté d'expression en Algérie.
14. MM. Benfodil, Meddi, Khatib et Addad auraient été arrêtés par la police pour « attroupement non autorisé » et transférés au commissariat de police du boulevard des Martyrs à Alger. Ils auraient été interrogés au sujet du rassemblement avant d'être libérés le même jour.
15. Des craintes ont été exprimées quant au fait que les arrestations de Messieurs Benfodil, Meddi, Khatib et Addad soient liées à leurs activités non violentes de promotion et de protection des droits de l'homme.

Réponse du Gouvernement

16. Dans une lettre en date du 5 octobre 2010, le Gouvernement a informé que le 3 mai 2010, est apparu, sur un site internet un communiqué intitulé « libérons L'ENTV », appelant une manifestation devant l'entreprise nationale de la télévision algérienne.

17. Le même jour, un attroupement devant le siège de cette entreprise a commencé à se constituer mené par trois personnes, en l'occurrence MM. Benfodil Mustapha, Meddi Adlane et Addad Hakim.

18. Pour éviter tout dérapage, les agents de la police judiciaire ont interpellé les sus nommés pour vérification d'identité et examen de situation. Le jour même, ils ont été libérés.

19. Aucune poursuite judiciaire n'a été exercée contre ces personnes.

20. De la même façon, aucune plainte n'a été déposée par ces personnes devant la Justice, pour quelque motif que ce soit.

Lettre d'allégation

21. Le 24 août 2010, la Rapporteuse spéciale, conjointement avec le Président-Rapporteur du Groupe de Travail sur les Disparitions Forcées ou Involontaires, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, a envoyé une lettre d'allégation concernant l'interdiction imposée aux mères de disparu(e)s de se réunir pacifiquement et la répression brutale d'une manifestation pacifique.

22. Selon les informations reçues, dans la matinée du 4 août 2010, un large groupe de gendarmes et de policiers auraient barré l'accès à la place Addis Abeba à Alger, siège de la Commission nationale consultative de promotion et de protection des droits de l'homme, dans le but d'empêcher des mères de disparu(e)s de se rassembler pacifiquement devant cette instance, comme elles le font tous les mercredis depuis le 2 août 1998.

23. Une semaine plus tard, le 11 août 2010, une quarantaine de mères de disparu(e)s et de sympathisants auraient tenté de se réunir à nouveau. Des policiers et gendarmes auraient alors fait usage de la force pour réprimer cette manifestation. M. Slimane Hamitouche aurait été jeté à terre par plusieurs policiers et aurait reçu de leur part des coups de poings à la tête et des coups de pieds. Mme Nassera Dutour aurait également été frappée par plusieurs policiers et souffrirait aujourd'hui de courbatures et d'hématomes sur les bras et les jambes. Me Amine Sidhoum, qui venait au secours de Mme Nassera Dutour, aurait été projetée à terre avec force et rouée de coups. Mmes El Boathie et Lekhal auraient été trainées par terre par leur foulard. Cette dernière, asthmatique et souffrant de problèmes de thyroïde, se serait évanouie et aurait été transportée à l'hôpital. M. Ferhati Hacène se serait également évanoui lors de cette répression brutale et aurait eu de violents maux de tête le lendemain. D'autres avocats présents, ainsi que des militants de la Ligue algérienne des droits de l'homme, auraient été bousculés. Plusieurs personnes, dont un père de disparu de 82 ans, auraient été détenues pendant près d'une heure dans un camion où ils avaient des difficultés à respirer du fait de la chaleur étouffante.

24. Le 18 août 2010, une nouvelle tentative de rassemblement par un groupe de mères de disparu(e)s et de sympathisants aurait eu lieu, en vain, la police contraignant les participants à monter dans un bus afin qu'ils quittent le lieu de rassemblement.

25. De sérieuses craintes ont été exprimées quant au fait que l'interdiction imposée aux mères de disparu(e)s de se réunir pacifiquement, ainsi que l'usage excessif de la force contre des manifestants pacifiques, soient liées à leurs activités légitimes de défense des

droits de l'homme, en l'occurrence leur travail visant à réclamer la vérité, la justice et une réparation adéquate.

Réponse du Gouvernement

26. Dans une lettre en date du 1^{er} décembre 2010, le Gouvernement a indiqué que lors du rassemblement du 11 août 2010, quatre personnes virulentes ont été interpellées par les forces de police pour les vérifications d'usages, sans pour autant faire l'objet de violences. Il s'agit des nommés Melis Arab, Amine Kellou, Imad Boubekeri et Moh Slimane Hamitouche. Ce dernier, qui a été également interpellé au cours des rassemblements des 4 et 18 août, pour son comportement récalcitrant et hostile envers les agents de l'ordre public, n'a fait l'objet d'aucune violence, avant d'être relaxé sur instruction de M. le Procureur de la République de céans, préalablement avisé par les services de police.

27. Les services de la sûreté n'ont, à aucun moment, réprimé les regroupements des mères des disparus. L'intervention des policiers qui ont participé aux services de l'ordre, s'est limitée à l'application des moyens légaux en leur qualité de force publique investie des missions de rétablissement de l'ordre dans le cadre de la loi en vigueur. Ils se sont acquittés de leur travail avec une certaine fermeté, mais en faisant preuve de beaucoup de doigté et de tact surtout à l'égard des femmes et des personnes âgées.

28. Aussi, le fait de faire appel au personnel féminin et leurs équipes relevant des services de la sécurité publique et non pas des éléments des unités républicaines de sécurité, habituellement équipés de moyens d'intervention, dénote la vigilance des services de la sûreté et l'assouplissement des mesures d'intervention entreprises envers les protestataires, préférant la canalisation du groupe, que de recourir à d'autres moyens, en raison de la maîtrise de la situation au regard du nombre réduit de personnes. Le résultat qu'il n'ait été enregistré aucun dépôt de plaintes ou d'évacuation en direction d'hôpitaux en raison de l'absence de tout cas de blessure en témoigne.

29. Il est à signaler que les personnes ayant introduit lesdites allégations, à savoir Nacera Dultour, El Boathie Lekhal, Amine Sidhoum et Ferhati Hâcène, considérées comme membres actifs de la pseudo association « SOS Disparus », entité qui n'a aucune existence juridique, veulent nuire à la réputation des services de sécurité d'une part, et tenter de faire entendre leur « cause » en déclin depuis la promulgation des dispositions de la Charte pour la paix et la Réconciliation nationale.

30. La Gendarmerie nationale n'a mis en place aucun dispositif, durant les manifestations des familles de disparus devant le siège de la Commission Nationale Consultative de Promotion et de Protection des Droits de l'Homme, les 4, 11 et 18 août 2010. Ce que confirme également la Direction général de la Sûreté Nationale, qui indique qu'il s'agit de surcroît d'un secteur intra-muros, du ressort exclusif des attributions des services de police.

31. De ce qui précède, il ressort que ces allégations démontrent l'échec et le discrédit des instigateurs de cette démarche inopportune, ayant pour objectif de nuire la réputation des services de sécurité d'une part, et de tenter de faire entendre leur « voix » en déclin et ayant perdu toute crédibilité et ce, depuis la promulgation des dispositions de la Charte pour la paix et la Réconciliation nationale.

32. Enfin, il est à signaler que la base légale ayant prévalu à l'interdiction des rassemblements des familles de disparus devant le siège de la Commission Nationale des droits de l'homme, est dictée par les dispositions de la loi n° 91-19 du 2 décembre 1991, relatives aux réunions et manifestations publiques, notamment dans son article 19 qui stipule que « Toute manifestation faite sans déclaration... est considérée comme attroupelement ».

Observations

33. Le Rapporteur spécial remercie le Gouvernement de ses réponses mais regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 8 janvier 2009, 7 novembre 2008, et 6 mars 2007. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits et les mesures de protection prises.

34. Le Rapporteur spécial remercie également le Gouvernement de son invitation à visiter l'Algérie, invitation qui a été honorée en avril 2011. Il renvoie au communiqué de presse qui a été publié en fin de mission et qui contient ses observations et recommandations préliminaires.¹ Un rapport détaillé les conclusions et recommandations finales sera présenté au Conseil des droits de l'homme en 2012.

35. Dans un communiqué de presse en date du 27 avril 2011, le Rapporteur spécial a exprimé sa profonde indignation et tristesse au sujet du meurtre d'un activiste politique qu'il avait rencontré lors de cette même visite. Il a appelé le Gouvernement à mener l'enquête la plus détaillée et indépendante qui soit sur ce meurtre tragique afin de traduire ses auteurs en justice. Une telle action, couplée à une condamnation publique de la part du Gouvernement, est indispensable pour garantir que cet acte odieux n'aura pas d'effet dissuasif sur la liberté d'expression dans tout le pays.²

Angola

Urgent appeal

36. On 5 October 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal concerning the killing of **Mr. Alberto Graves Chakussanga**, journalist and host of a weekly news call-in programme on the privately-owned Angolan Radio Despertar, known to be critical of the Government.

37. According to the information received, on 5 September 2010, Mr. Alberto Graves Chakussanga was shot dead at his house in Luanda's Viana District by unidentified assailants. Prior to his death, he had received anonymous death threats in relation to his activities as a journalist. The Police Criminal Investigation Unit has reportedly opened an investigation.

38. Grave concerns were expressed that Mr. Alberto Graves Chakussanga may have been killed because of the exercise of his right to freedom of opinion and expression.

Observations

39. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 5 October 2010 and to earlier communications sent on 27 January 2010 and four communications sent in 2008. He

¹ « La pleine garantie du droit à la liberté d'expression est essentielle au moment où l'Algérie s'engage dans des réformes politiques », déclare l'expert de l'ONU, 19 avril 2011 :

<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=10949&LangID=F>

² Un expert des Nations Unies choqué par le meurtre tragique d'un activiste politique en Algérie, 27 avril 2011 :

<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=10963&LangID=F>

urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Argentina

Carta de alegaciones

40. El 1 de octubre de 2010, el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron una carta de alegaciones señalando a la atención urgente del Gobierno la información recibida en relación con el asesinato del Sr. Adams Ledesma Valenzuela en una villa de emergencia o barrio desfavorecido de la Ciudad de Buenos Aires. El Sr. Ledesma, de 41 años, de nacionalidad boliviana, trabajaba como reportero del semanario comunitario Mundo Villa y preparaba la apertura del canal de televisión Mundo TV Villa, que emitiría su señal por cable a hogares de la comunidad. El Sr. Ledesma era asimismo un líder comunitario de larga trayectoria en el barrio.

41. Según las informaciones recibidas, el sábado 4 de septiembre, en la barriada 31 Bis de Retiro en Buenos Aires, el Sr. Ledesma habría recibido una llamada para ayudar a un vecino a reparar un desperfecto eléctrico, pero al salir de su casa fue asesinado. Familiares del periodista habrían sido amenazados por personas desconocidas cuando intentaban ayudarlo en el lugar de los hechos, así como durante el funeral, en ambos casos instándolos a salir de la localidad.

42. El Sr. Ledesma solía informar sobre problemas que afectaban al barrio, como las malas condiciones sanitarias y desperfectos en las vías públicas. Según informes recibidos, en junio de 2010, el Sr. Ledesma habría anunciado el lanzamiento del canal de televisión y habría adelantado que pretendía hacer periodismo de investigación para informar acerca de personajes conocidos que llegaban a comprar droga a la villa.

43. Se expresó grave preocupación por el asesinato del Sr. Adams Ledesma Valenzuela y por la posibilidad que este hecho pudiera estar relacionado con sus actividades de promoción y protección de los derechos humanos, en particular con su labor como reportero y líder comunitario en la barriada 31 Bis en Buenos Aires.

Respuesta del Gobierno

44. Mediante carta fechada el 25 de noviembre de 2010, el Gobierno respondió al llamamiento urgente con fecha de 1 de octubre de 2010.

45. El Gobierno de Argentina informa a que se investiga el suceso que tuvo lugar el día 4 de septiembre del 2010, a las 5.30 horas aproximadamente, en el interior de la Villa 31 bis de la Capital de Federal, más precisamente frente a la casa 175 de la manzana 99, en el que perdió la vida una persona de sexo masculino identificada como Adams Ledezma Valenzuela, a raíz de lesiones por arma blanca (cuchillo) en cuello y abdomen hemorragia interna y externa, que habrían sido producidas por el accionar de una persona quien para ello habría utilizado un cuchillo de aproximadamente 14 cm de largo y punta filosa.

46. Se llevó a cabo una investigación y una persona fue arrestada por el asesinato del Sr. Adams Ledezma Valenzuela.

Observaciones

47. El Relator Especial agradece al Gobierno de Argentina la respuesta recibida. Sin embargo, lamenta que, en el momento de finalizar este informe, no se había recibido respuesta a cuatro comunicaciones enviadas el 27 de febrero de 2006, el 17 de septiembre de 2004, el 16 de septiembre de 2004 y el 27 de agosto de 2004. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato es por ello que insta al Gobierno a que le proporcione una respuesta acerca de los casos mencionados.

Austria

Urgent appeal

48. On 1 November 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding an alleged plan to assassinate Mr. **Farid Tukhbatullin**, currently resident in Austria. Mr. Tukhbatullin is the director of the Turkmen Initiative for Human Rights (TIHR), a non-governmental organisation founded in 2004 and based in Vienna, Austria.

49. The TIHR publishes information and submits reports regarding the human rights situation in Turkmenistan. A similar communication has been sent to the Government of Turkmenistan. The reason this appeal has also been sent to your Excellency's Government is to draw its attention to this case so that adequate measures may be taken to ensure the physical and psychological integrity of Mr. Tukhbatullin

50. According to the information received, on 9 and 11 October 2010, Mr. Farid Tukhbatullin was informed by reliable sources that agents of the Ministry of National Security (MNS) of Turkmenistan were allegedly planning to assassinate him. According to the said sources, Ministry officials had discussed assassinating Mr. Tukhbatullin in such a way as not to give rise to suspicion of foul play, such as through an orchestrated "accident" or by inducing heart failure.

51. The alleged assassination plot has reportedly been linked to a recent interview given by Mr. Tukhbatullin concerning the TIHR's assessment of the human rights situation in Turkmenistan. The interview was broadcast on the satellite TV channel K+ on 28 and 29 September 2010.

52. In a possibly related incident, the TIHR's website was subsequently attacked by an unknown group of hackers and was largely inaccessible for several days following the broadcast of the interview.

53. It is reported that on 18 October 2010, Mr. Tukhbatullin, along with the founding chairman of the Republican Party of Turkmenistan in exile, Mr. Nurmuhmet Khanamov, were denied registration as participants in the OSCE review conference at Hofburg Palace, Vienna. However, On 19 October 2010, the decision was taken to grant Messrs. Tukhbatullin and Khanamov admission to the conference, which allegedly prompted the official delegation of Turkmenistan to leave the conference room.

54. It is reported that the Turkmen authorities have on various occasions attempted to hinder the work of the TIHR, such as through attempting to identify its correspondents within Turkmenistan, whose identities are not disclosed. It is alleged that in June 2010, officials from the MNS visited several schools in Mr. Tukhbatullin's former home town, and interviewed former classmates, teachers, and friends of Mr. Tukhbatullin's sons with a view to identifying such correspondents.

55. It has also been reported that in April 2008, Mr. Tukhbatullin was warned by a Turkmenistani diplomat to “tone down” criticism of the Turkmenistani authorities on his organization’s website, or cease his activities entirely.

56. Mr. Tukhbatullin, who has worked on environmental and human rights issues in Turkmenistan since 1993, was arrested and imprisoned in Turkmenistan in December 2002, allegedly as a result of his human rights activities. Following his release from prison in April 2003, he left Turkmenistan for Austria, where he was granted refugee status, and founded the TIHR in November 2004.

57. Concern was expressed that the alleged plot to assassinate Mr. Farid Tukhbatullin may have been related to his legitimate and peaceful work in defence of human rights in Turkmenistan. In this connection, serious concern is also expressed for the physical and psychological integrity of Mr. Farid Tukhbatullin and his family.

Response from the Government

58. In a letter dated 10 December 2010, the Government responded to the urgent appeal sent on 1 November 2010.

59. Austria considers the aforementioned case to be serious, and confirms that there is a clear risk situation. The facts as they are set out in the urgent appeal correspond with those available to the competent Austrian authorities.

60. Immediately after the alleged threats against Mr. Farid Tukhbatullin were brought to the Attention of Austria, the competent Austrian Authorities have contacted Mr. Tukhbatullin and subsequently taken all necessary measures based on a risk analysis.

61. For the sake of Mr. Tukhbatullin’s personal safety details of the security and investigative measures cannot be unveiled. However, Austria would like to reassure that the competent authorities are taking the case of Mr. Tukhbatullin very seriously and provide all necessary protective measures to ensure Mr. Tukhbatullin’s personal safety in Austria.

Observations

62. The Special Rapporteur thanks the Government of Austria for responding to his communication dated 1 November 2010 and takes note of the measures taken by the Government to ensure that Mr. Turkbatullin’s security needs are met.

Azerbaijan

Urgent appeal

63. On 16 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding **Human Rights House Azerbaijan**, which has been registered as a partner of the International Human Rights House Network since 2007 and works on the promotion and protection of human rights in Azerbaijan.

64. According to the information received, on 10 March 2010, Human Rights House Azerbaijan was allegedly ordered by the Ministry of Justice to cease all activities with immediate effect. The Ministry of Justice reportedly stated that Human Rights House Azerbaijan must obtain prior permission from the State in order to conduct its activities in the future. It is reported that Human Rights House Azerbaijan was not issued with a warning. It was reported that the Human Rights House Azerbaijan operates as a meeting place, a resource centre and a focal point for human rights organizations in the country.

65. Concern was expressed that the closure of Human Rights House Azerbaijan will impede its legitimate work on the promotion and protection of human rights and will hamper the meeting and coordination of other human rights defenders working in the country. Further concern was expressed that such a measure may encroach upon the rights of many human rights defenders to freedom of expression, assembly and association, and as such may have a negative impact on the community as a whole.

Response from the Government

66. In a letter dated 5 May 2011, the Government replied to the urgent appeal sent on 16 March 2011 as follows.

67. According to article 4.1 of the Law of the Republic of Azerbaijan on “State registration and registry of the legal entities”, any entity seeking to acquire a legal status in the Republic of Azerbaijan, as well as representation or branch of the foreign non-governmental organizations should be registered and included to the state registry. The representations or branches of the foreign non-governmental organizations can operate only after state registration.

68. The Azerbaijani representation of the Norwegian “Human Rights House” has been registered on 25 May 2007 and started to operate freely.

69. According to article 12.3 of the Law of the Republic of Azerbaijan on “Non-governmental organizations”, the representations or branches of the foreign non-governmental organizations are registered based on the agreements signed with them.

70. Because of absence of the relevant agreement in conformity with the legislation, the Ministry of Justice demanded the Azerbaijani representation of the Norwegian “Human Rights House” to cease its activity and stated the necessity of solving the issue within the parameters of the national legislation.

71. It should be noted that the notification of concluding agreement doesn’t restrict the realization of human rights enshrined in the International Covenant on Civil and Political Rights. The said agreement is signed by the reciprocal understanding and provides the organization with additional guarantees.

72. On 21 April 2011 the meeting was held in the Ministry of Justice with Maria Dahle, Executive Director of the Oslo-based Human Rights House Foundation, Ane Bonde, Programme Manager on Caucus and Eastern Europe and representatives of Baku Office of the organization.

73. During the meeting, the representatives of “Human Rights House” have been informed about the measures taken regarding the development of civil society, non-governmental sector, democratic reforms and the improvement of the legislation. It was highlighted that the branch of “Human Rights House” had been registered and there was no obstacle and biased attitude to the activity of the organization, the latter should simply respect the requirements laid down in legislation and sign an agreement in accordance with the regulation on “Rules for conducting negotiations and signing agreements on state registration of foreign non-governmental organizations” approved by the Cabinet of Ministers in March 2011. The representatives of the “Human Rights House” underscored their respect to the national legislation of the Republic of Azerbaijan. Furthermore, they appreciated the cooperation with the Ministry of Justice and expressed their readiness to conduct discussions in order to sign an agreement.

Observations

74. The Special Rapporteur thanks the Government for the reply to the communication sent on 16 March 2010, but regrets that at the time of the finalization of this report, no reply

had been received to two communications sent in 2009 and three communications sent in 2008. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Bahrain

Allegation letter

75. On 28 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegations regarding the situation of the **Bahrain Human Rights Society (BHRS)**, an organization established in 2001 to promote human rights in Bahrain. According to the information received, on 21 March 2010, BHRS sent a letter to the Bahraini Ministry of Social Development asking, pursuant to a recently established practice, that it addresses the Directorate of Immigration and Passports to facilitate the granting of visas of foreign participants attending its capacity building workshop on human rights scheduled to take place from 27 to 29 May 2010. The workshop, organized in collaboration with the Association for the Prevention of Torture, was to address several issues related to the rights of detainees and prisoners such as the basic rules for the treatment of prisoners, the use of international human rights mechanisms, and the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

76. On 19 April 2010, BHRS was denied the holding of the workshop by a letter from the Ministry of Social Development. The letter allegedly stated that “after reviewing the request and the program of the event, it was found that the workshop contradicts with the objectives of BHRS by-laws, Decree Law No. (21) of 1989 Promulgating the Law on associations and social and cultural clubs and organizations working in the field of youth sports and private institutions, and in particular Article 18, which states: ‘the Association may not get involved in political activities’. And therefore we are unable to approve your request mentioned above; this stresses the need to comply with ... the law.”

77. Concern was expressed that the denial of permission of the workshop might be directly related to the work of BHRS in defence of human rights.

Response from the Government

78. In a letter dated 11 January 2011, the Government responded to the communication sent on 28 April 2010. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Urgent appeal

79. On 20 August 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, sent a joint urgent appeal regarding the situation of Dr. **Abduljalil Al Singace**, Director and Spokesperson of the Human Rights Bureau of the Haq Movement for Civil Liberties and Democracy, Mr. **Abdul Ghani Al Kanja**, Spokesperson of the National Committee for Martyrs and Victims of Torture, Mr. **Jaffar Al-Hessabi**, a Bahraini human right activist who has been living in the United Kingdom (UK) for 15 years where he has advocated for

the release of political prisoners, Mr. **Mohammed Saeed**, a board member of the non-governmental organization Bahrain Centre for Human Rights, as well as **Sheikh Mohammed Al-Moqdad, Sheikh Saeed Al-Nori, Sheikh Mirza Al-Mahroos and Sheikh Abdulhadi Al-Mukhuder**, four religious and political activists.

80. According to the information received, on 13 August 2010, Mr. Abduljalil Al Singace was reportedly arrested at Bahrain International Airport on his way back from the UK with his family, following his participation on 5 August in a seminar on the human rights situation in Bahrain held at the House of Lords, during which he denounced the alleged deterioration of the human rights and environmental situation in the country. During his stay in the UK, Mr. Al Singace took the opportunity to meet with a number of international human rights organizations. According to reports, Mr. Al Singace, who is disabled and requires the use of a wheelchair, was forcefully apprehended by the authorities. On the same day, a peaceful demonstration in solidarity took place in front of Mr. Al Singace's house, and was violently repressed by security forces using tear-gas, sound bombs and rubber bullets. Several demonstrators were injured in the course of the operation.

81. On 15 August 2010, security forces raided Mr. Abdul Ghani Al Kanja's home, arrested him and confiscated his computer and mobile phones.

82. It was reported that Messrs Al Singace and Al Kanja are accused of "forming an organized network aiming at weakening the security and the stability of the country" under the Anti-Terrorism Law and the Criminal Code. According to Mr Al Singace's lawyer who spoke to the Public Prosecution Office, case numbers are yet to be assigned and Mr. Abduljalil Al Singace will face charges of sedition and making unauthorised contact with foreign bodies. Both Messrs Al Singace and Al Kanja are reportedly denied access to their lawyer and to their families. Their whereabouts remain unknown as of 20 August 2010.

83. On 16 August 2010, Mr. Jaffar Al-Hessabi was arrested at Bahrain International Airport on his way back from Iran, following his participation in peaceful protests in London.

84. On 17 August 2010, Mr. Mohammed Saeed was arrested at his home.

85. Finally, between 15 and 17 August 2010, Messrs Sheikh Mohammed Al-Moqdad, Sheikh Saeed Al-Nori, Sheikh Mirza Al-Mahroos and Sheikh Abdulhadi Al-Mukhuder were arrested following their recent participation in peaceful protests calling for the release of political prisoners.

86. Serious concerns were expressed that the arrest and detention of Messrs Abduljalil Al Singace, Abdul Ghani Al Kanja, Jaffar Al-Hessabi, Mohammed Saeed, Sheikh Mohammed Al-Moqdad, Sheikh Saeed Al-Nori, Sheikh Mirza Al-Mahroos and Sheikh Abdulhadi Al-Mukhuder, and the charges brought against some of them, may be linked to their peaceful activities in defence of human rights, while exercising their right to freedom of opinion and expression. In view of the incommunicado detention of Messrs Abduljalil Al Singace and Abdul Ghani Al Kanja, and possibly of Messrs Jaffar Al-Hessabi, Mohammed Saeed, Sheikh Mohammed Al-Moqdad, Sheikh Saeed Al-Nori, Sheikh Mirza Al-Mahroos and Sheikh Abdulhadi Al-Mukhuder, further concerns are expressed for their physical and psychological integrity, most notably for Abduljalil Al Singace who is disabled and needs assistance to walk. Finally, concern was expressed about the excessive use of force against participants of the peaceful protest in front of Mr. Abduljalil Al Singace's house.

Response from the Government

87. In a letter dated 12 October 2010, the Government responded to the urgent appeal sent on 20 August 2010 as follows.

88. The eight suspects have been arrested because evidence has emerged that they are allied in a structured network aimed at compromising national security and abusing the country's stability. Namely, this network aims to overthrow and change the political system of the country, dissolve the constitution and obstruct the enforcement of its provisions, inciting and planning terrorist acts, inciting hatred and contempt against the regime, threatening public order and endangering the safety and security of the Kingdom.

89. This network has spread disorder in the country by recruiting youths and juveniles and inciting them to compose sabotage groups to commit acts of riot, violence and vandalism, disturbance of civil peace, attacking security personnel, nationals and foreigners residing in Bahrain, terrorizing them and damaging their private properties.

90. All such acts are punishable crimes pursuant to Law No.58 of 2006 with respect to Protecting the Community from Terrorist Acts. The suspects were arrested under this law and not under Bahrain's Code of Criminal Procedure which provides that suspects must be brought before the Public Prosecution within 48 hours of arrest. According to Article 27 of Law No. 58 of 2006, Judicial Officers are granted the right, subject to the emergence of sufficient evidence, to issue a protective custody order for a period not exceeding five days, and if necessary, permission may be obtained from the Public Prosecution to extend the custody to a period not exceeding 10 days. Such permission is strictly granted if the Judicial Officer provides sufficient evidence that the extension of the custody is essential for the continuation of the investigations. Following this period of 10 days, the suspects were duly referred to the Public Prosecution.

91. As a principal division of the judicial authority, the Public Prosecution have commenced and handled criminal proceedings. Working in its capacity as an investigation and indictment authority, and, following intensive investigations by prosecutors into the clandestine terror network, the eight suspects were laid with 12 charges under the Penal Code No. 15 of 1976, Law No. 58 of 2006 with respect to Protecting the Community from Terrorist Acts and Law No. 4 of 2001 with respect to Countering Money Laundering and Financing of Terrorism. The charges include: founding, organising and managing an outlawed organisation with the aim of violating the law and disrupting provisions of the constitution and to prevent public authorities from exercising their duties, using terrorism; creation and establishment of an organization with the objective of overthrowing the regime, changing the statutes and using illegal violent means such as arson and vandalism; taking part in acts of sabotage, destruction and arson with terrorist attempt; raising funds for an organization that is involved in terrorist acts inside the country, willingly and knowingly; disseminating hatred and mockery of the political system through public speeches and the internet; agreeing and inciting to destroy public property; spreading provocative propaganda, news and false statements to destabilize public security and cause damages to public interests; publicly instigating sectarian hatred which disturbs civil peace; inciting others through public speeches and the Internet to disregard the law; inciting participation in public congregations with the purpose of committing arson, vandalism, and confronting the security authorities; and unlawfully using force and violence to compel a public servant to abstain from his duty.

92. It is clear that all charges are on terror crimes, use of force and instigation to it. In this regard, it should be mentioned that all guarantees relevant to the suspects' rights have been respected during the investigations.

93. In response to the information received by the Working Group with regard to the reasons for the suspects' arrest, the Government would like to emphasize that the arrests were based purely on security measures, and were not motivated by nor linked to their peaceful activities in defence of human rights, but had been in the light of the existence of confirmed information, investigations and evidence that they are part of a structured network aimed at compromising national security and abusing the country's stability.

94. Following the arrest of the eight suspects, they have all confessed that they were indeed involved in forming sabotage groups and instructed them to carry out rioting, arson, vandalism and attacking security men. Abduljalil Al-Singace confessed that he supported the groups financially to purchase necessary equipment and materials to undertake such sinful acts. He also admitted in details that he, along with the other seven suspects, incited openly and secretly to spread chaos in the country and to carry out sabotage acts, along with fund raising from citizens and businessmen under the guise of religion, charity and support for the families of prisoners and alleged martyrs and victims of torture.

95. Further, security authorities have arrested individuals who carried out arsons and rioting in varying incidents and in various areas, all of whom have confessed that Abduljalil Al-Singace was their main supporter and inciter for those acts.

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

97. Secondly, concerning the intent behind the aforementioned attacks, it may be seen from these acts of violence that the sabotage groups are aiming at the destruction of public order. They intend to cause fear among the general population and they chose to undertake their terrorist acts at night to spread even greater terror in the hearts of the general public. Some of the suspects have confessed that this intent was present while inciting the sabotage groups to commit acts of destruction to public order.

98. Hence, having seen that the means used by the sabotage groups can be described as deadly and of serious violence against members of the general population; and, having regard that the intent is to cause fear among the population along with destructing public order, one may fairly deduce that the bold presence of these two conditions cumulatively fulfill these acts to be criminalised as terrorist.

99. Last but not least, elucidation shall duly be made on the allegations on the violent repression by security forces of the peaceful protest in front of Abduljalil Al-Singace's house. Principally, the Government has taken all necessary steps to ensure the right of peaceful assembly. Acting in accordance with Article 21 of the International Covenant on Civil and Political Rights, the Government recognizes that no restrictions may be placed on this right other than those imposed in conformity with the law and which are necessary in the interest of national security of public safety, public order or the protection of the rights and freedoms of others. In this connection, participants in the protest in front of Al-Singace's house have resorted to violence for realization of the purpose for which they have assembled (release Al-Singace), causing their peaceful demonstration to be deemed as a riot. Security forces have exercised their authority granted by Article 180 of the Penal Code and ordered the demonstrators to disperse. Should the order come to no avail, security forces shall be empowered to take the necessary measures for dispersing those who have not complied with the order by arresting them and may use force within reasonable limits against any person resisting said order. They may not use firearms except in extreme necessity or when someone's life is in danger. The demonstrators have continued rioting despite receiving orders from security forces to disperse. Having ignored such orders, and, having regard to the interest of public order, security forces were compelled to use force to confront and terminate the mounting violence and disperse the rioters. In this connection,

security forces have exerted force in accordance with the provisions of the public security forces law. Namely, Article 13 has regulated the use of force in dispersing demonstrators and rioters. Force is only exerted following the failure of non-violent means, warning of resorting to the use of force and being the only remaining means of separation. Along with resorting to force in order to obstruct an assault or resistance from demonstrators or rioters.

100. In this connection, mention shall be duly made that these rioters and protesters, who were initially incited by the suspects, have been camouflaging their acts of violence by labeling them as human rights activism or peaceful demonstrations or protests. It goes without saying that committing acts of riot, violence and vandalism under the disguise of promoting and protecting human rights reflects nothing but a solid violation of Article 3 of the Universal Declaration of Human Rights which stipulates that everyone has the right to life, liberty, and security of person. The Government of Bahrain is bound to protect individuals and groups against the abuse of these fundamental rights.

101. The Government of Bahrain reaffirms its adherence to the provisions stipulated in the UN body of Principles for the Protection of all Persons under any form of Detention or Imprisonment. All persons under any form of detention are treated in a humane manner with respect for their physical and psychological integrity and inherent dignity of the human person. Most notably, with regard to the disability of Abduljalil Al-Singace, he has been provided with a wheelchair and is always assisted when walking. Any arrest, detention or imprisonment is only carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose. Convinced that the adoption of this Body of Principles would make an important contribution to the protection of human rights, Bahrain has prohibited by law any act contrary to the rights and duties contained therein.

102. It is also worth stressing that the recent arrests have no relation whatsoever with the parliamentary elections scheduled to take place on 23 October next. All suspects do not recognize these elections. They never participated in them, and not only did they boycott the elections, but they called for a boycott ever since the re-birth of parliamentary elections in 2002.

Urgent appeal

103. On 27 August 2010, the Special Rapporteur sent an urgent appeal concerning the case of Mr. **Mohanad Abu Zeitun**, editor of the Bahraini newspaper *Al Watan*.

104. According to the information received, on 25 August 2010, Mr. Abu Zeitun was reportedly assaulted by two unidentified men in the newspaper's parking lot. Mr. Abu Zeitun was beaten up and stabbed in the shoulder. He lost a lot of blood before paramedics arrived on the scene and stopped the hemorrhage. Before fleeing, the attackers set Mr. Abu Zeitun's car into fire.

105. It was alleged that the attack against Mr. Abu Zeitun is linked to the newspaper's critical coverage of religious riots allegedly led by hardliners from all religious communities in Bahrain.

Response from the Government

106. In a letter dated 4 January 2011, the Government responded to the urgent appeal sent on 27 August 2010 as follows.

107. Bahrain, which is keen to cooperate with the Human Rights Council mechanisms and takes all human rights very seriously, recognizes the importance of the right to freedom of opinion and expression. Accordingly, the relevant authorities have taken up this matter, provided legal assistance and guarantees to the opposing parties and brought the case before

the courts, which have yet to issue a ruling on it. In dealing with this matter, Bahrain has fully met all its responsibilities. Moreover, it wishes to express its gratitude to the Special Rapporteurs for their concern and inquiries about this matter.

108. On 25 August 2010, the Office of the Public Prosecutor was informed that Mr. Mohanad Abu Zeitun, editor of Al-Watan newspaper, had been assaulted by two individuals while he was leaving his place of work. Those individuals had beaten him up and set fire to his car. In order to ascertain the facts and build an investigation case, the Office of the Public Prosecutor organized a visit to the place where the assault had occurred and interviewed Mr. Abu Zeitun, whose testimony was consistent with the information in the police report on the incident. Mr. Abu Zeitun was also examined by a medical examiner to assess his injuries, what caused them and what instrument had been used to inflict them. The police were tasked with making inquiries with a view to apprehending the perpetrators of the assault.

109. On 29 August 2010, two accused persons, Mr. Jaffar Ahmed Nasser Juma'a and Mr. Hasan Ali Mahdi Ramadan, were brought to the Office of the Public Prosecutor and questioned about the assault on Mr. Abu Zeitun. They both made detailed confessions, which were consistent with the statement given by Mr. Abu Zeitun to the Office of the Public Prosecutor on 25 August 2010.

110. On 17 October 2010 the case was referred for trial of the two accused persons on the following charges: (a) Physically assaulting another person (Mr. Abu Zeitun), for a terrorist purpose, by striking that person with a sharp, hand-held object and causing the injuries that were detailed in the medical report; (b) Starting a fire likely to endanger the assets and property of another person, for a terrorist purpose; in this case, they deliberately set fire to Mr. Abu Zeitun's car, which is an offence under the Criminal Code (art. 221, paras. 1 and 2; art. 339, paras. 1 and 2; and art. 277, para. 1); the Protection of Society from Terrorism Act No. 58 of 2006 (art. 1, paras. 1, 2 and 5 (d); art. 2, paras. 1 and 3; and art. 3, paras. 4 and 5); and Decree Law No. 47 of 2002, concerning the regulation of the press, printing and publishing (art. 34).

111. The court held a session on 28 November 2010 to hear the testimony of a witness for the prosecution. The hearing was then adjourned until 12 December 2010, in order to allow Mr. Abu Zeitun and a guard at the Al-Watan newspaper building to be summoned to testify.

Urgent appeal

112. On 15 September 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Chair-Rapporteur of the Working Group on Enforced and Involuntary Disappearances sent a joint urgent appeal regarding the situation of Mr. **Abduljalil Al Singace**, Director and Spokesperson of the Human Rights Bureau of the Haq Movement for Civil Liberties and Democracy, Mr. **Abdul Ghani Al Kanja**, Spokesperson of the National Committee for Martyrs and Victims of Torture, Mr. **Jaffar Al-Hessabi**, a Bahraini human right activist who has been living in the United Kingdom (UK) for 15 years where he has advocated for the release of political prisoners, and Mr. **Mohammed Saeed**, a board member of the non-governmental organization Bahrain Centre for Human Rights. The persons mentioned were all arrested between 13 and 17 August 2010, and their whereabouts remain unknown.

113. The situation of the persons named above was the subject of a communication sent on 20 August 2010, by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection

of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

114. According to the information received, the persons mentioned above, Mr. Abduljalil Al Singace (arrested on 13 August), Mr. Abdul Ghani Al Kanja (arrested on 15 August), Mr. Jaffar Al-Hessabi (arrested on 16 August) and Mr. Mohammed Saeed (arrested on 17 August) are being held incommunicado in an undisclosed place of detention since the day of their arrest.

115. In this connection, reports have been received indicating that Mr. Abduljalil Alsingace has been subject to physical and psychological abuse as a result of which he almost lost his hearing ability and has injuries in his back and other parts of his body. According to the information received, on 27 August 2010, Mr. Abduljalil Alsingace appeared before the Public Prosecutor. Mr. Abduljalil Alsingace has reportedly been kept in solitary confinement since his detention and his prescription glasses have been confiscated. His wheelchair and crutches have been taken from him and thus he has been forced to pull himself in the cell with his arms. Mr. Alsingace depends almost completely on the wheelchair for his movement since he was diagnosed with polio when he was two years old resulting in complete paralysis in one leg and partial paralysis in the other. As part of the torture he reported, Mr. Alsingace was kept standing on his partially paralyzed leg for two consecutive days. Moreover, Mr. Alsingace was allegedly beaten on his fingers with a rigid object and slapped on both ears until he could barely hear from them. His nipples and earlobes were allegedly pulled with tongs. Mr. Alsingace was reportedly forced to listen to the sound of the electricity machines to scare him and was threatened with rape against him and his female family members. Mr. Alsingace was also reportedly beaten with a rigid object on his back during the interrogation period in order to force him to sign papers of unknown content.

116. The information received also includes allegations of torture and ill-treatment of the other detainees who have reportedly been handcuffed; blindfolded; held in solitary cells; denied food and water for long periods; hung by their hands, their legs tied and their bodies; beaten until swollen and bruised; deprived of sleep; and forced to listen to the screams of others being tortured. In this connection, we have received reports indicating the transfer of some activists and human rights defenders to hospitals as a result of mistreatment, including that of Mr. Abdul Ghani Al Kanja.

117. Furthermore, according to the reports received, on 6 September 2010, the Bahraini authorities published a ministerial order announcing the dissolution of the Board of Directors of the Bahrain Human Rights Society (BHRS) and appointed an employee of the Ministry of Social Affairs to administer the society until the holding of a general assembly. The grounds reportedly provided were the organization's lack of neutrality towards Bahraini society and the publication of articles issued by illegal entities on its website. This order reportedly follows a statement by the Ministry of Social Development published on 2 September 2010, in local newspapers in which it announced that it will take legal and administrative action against human rights organizations which, according to the Ministry, defend a specific category of citizens and neglect the others.

118. According to the information received, on 28 August 2010, the BHRS organized a press conference with other NGOs and in the presence of family members of detainees, including the human rights defenders mentioned above. During the press conference, BHRS denounced the conditions of detention and the lack of access to the detainees by their lawyers and families and called for respect for the right of due process and a fair trial.

119. Concern was expressed about the physical and mental integrity of Mr. Abduljalil Al Singace, Mr. Abdul Ghani Al Kanja, Mr. Jaffar Al-Hessabi, and Mr. Mohammed Saeed and

allegations received that all of them are being held incommunicado in a secret place of detention since their arrest and that their fate and whereabouts remained unknown. In this connection, concern was expressed about reports received indicating that Mr. Abduljalil Al Singace and the other detainees may have suffered torture and ill-treatment during their detention as a result of which some of the human rights defenders mentioned may have been transferred to hospitals.

120. Moreover, concern was expressed at allegations that the dissolution of the Board of Directors of the Bahrain Human Rights Society may be related to the activities of the organization in defense of human rights in the country, in particular denouncing the conditions of detention of the above-mentioned persons, the lack of access to the detainees by their lawyers and families and the right to due process and a fair trial.

Response of the Government

121. In a letter sent on 12 October 2010, the Government responded to the communication sent on 15 September 2010.

122. In respect to the mandates provided by the Human Rights Council to seek to clarify all cases brought to your attention, and, having regard to the information drawn to the attention of the Government of Bahrain, allow us to duly clarify two issues.

123. Firstly, the situation regarding Dr. Abduljalil Al-Singace, Mr. Abdulghani Al-Khanjar, Mr. Jaffar Al-Hessabi and Mr. Mohammed Saeed (hereinafter the suspects):

124. As mentioned in a previous correspondence with your respected Working Group, these suspects were arrested in the light of the existence of confirmed information, investigations and evidence that they are part of a structured terrorism network aimed at compromising national security and abusing the country's stability through terrorism and violence.

125. Investigations thus far have found the network to be responsible for inciting and planning terrorist acts, inciting hatred and contempt against the government, threatening public order and endangering the safety and security of the Kingdom. The aim of the network is to overthrow and change the political regime of the country, dissolve the constitution and obstruct the enforcement of its provisions.

126. The network has spread disorder in the country by recruiting youths and juveniles and inciting them compose sabotage groups to commit acts of riot, violence and vandalism, disturbance of civil peace, attacking security personnel, nationals and foreigners residing in Bahrain, terrorizing them and damaging their private properties.

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

128. Following the ten days elapse, all of the suspects were duly referred to the Public Prosecution. As a principal division of the judicial authority, the Public Prosecution has commenced and handled criminal proceedings. Working in its capacity as an investigation and indictment authority, and following intensive investigations by prosecutors into the

clandestine terror network, the suspects were charged under the Penal Code No. 15 of 1976, Law No. 58 of 2006 with respect to Protection the Community from Terrorist Acts Law No. 4 of 2001 with respect to Countering Money Laundering and Financing of Terrorism.

129. It is worth mentioning that the suspects have labelled their acts of violence as human rights activism or peaceful demonstrations or protests. It goes without saying that inciting to acts of riot, violence and vandalism under the disguise of promoting and protecting human rights reflects nothing but a solid violation of article 3 of the Universal Declaration of Human Rights which stipulates that everyone has the right to life, liberty and security of person. The Government of Bahrain is bound to protect individuals and groups against the abuse of these fundamental rights.

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

131. Bahrain strictly refuses any recourse to torture. Any alleged incident of torture may not be overseen. It is unanimously agreed in Bahrain and amongst security authorities that torture is an unacceptable approach in handling any case or event, be it criminal or political. Bahrain has codified strict measures to penalize civil servants or officers should they conduct such unlawful acts. The suspects were all referred to forensic doctors and apparently, no complaint has been officially lodged by or on behalf of the alleged victims of torture.

132. It is apparent that the information sent to the respected Working Groups is defamatory by all means. It has been noticed that most of the light was shed on Dr. Abduljalil Al-Singace and the alleged torture and ill-treatment he and the others are facing. It is recognized that Dr. Al-Singace requires extra care due to his partial paralysis in his legs. He is provided with a wheelchair and crutches and is always assisted when walking. He holds his prescription glasses and he is currently enjoying reading a book he requested titled Mafateeh Al-Jenan. The suspects have the right to obtain within the limits of available responses, education, cultural and informational material. They also preserve their right to be visited by and to correspond with family members and friends, and visits are indeed ongoing. The suspects are allowed to exercise and play sports together.

133. In addressing the Working Groups' appeal to seek clarification of the circumstances regarding the cases of the suspects, the Government provided a brief account of where they stand.

134. Dr. Abduljalil Al-Singace: He was arrested on 13 August 2010 and referred to the Public Prosecution on 26 August 2010. A warrant has been issued by the Public Prosecution to remand him in custody for 60 days. He has a defence team of five lawyers. The list of charges was provided.

135. Mr. Abdulghani Al-Khanjar: He was arrested on 15 August 2010 and referred to the Public Prosecution on 28 August 2010. A warrant has been issued by the Public Prosecution to remand him in custody for 60 days. He has a defence team of 7 lawyers. The list of charges was provided.

136. Mr. Mohammed Saeed: He was arrested on 17 August 2010 and referred to the Public Prosecution on 31 August 2010. A warrant had been issued by the Public Prosecution to remand him in custody for 60 days. He has a defence team of 2 lawyers. The list of charges was provided.

137. Mr. Maffar Al-Hessabi: he was arrested on 16 August 2010 and referred to the Public Prosecution on 31 August 2010. A warrant has been issued by the Public Prosecution to remand him in custody for 60 days. The list of charges was provided.

138. The above suspects are all charged with criminal offences. They preserve their right to be presumed innocent and are treated as such until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence. In this connection, Bahrain assures its commitment to preserving the suspects' right in full equality to fair proceedings before an independent and impartial tribunal to determine the criminal charges against them. The law guarantees the independence of the judiciary and the probity and impartiality of judges. In this context attention shall be drawn to article 104 of the Constitution.

139. The suspects have exercised their constitutional and legal rights and are all legally represented and their court hearing will be held publicly. If the suspect does not have a legal counsel, he is entitled to have a legal counsel assigned to him by the court and under its expense. Judgments may be challenged before the Courts of Appeal and the compliance of the judgments of the foregoing courts with the law is examined by the Courts of Cassation.

140. Secondly, the dissolution of the Board of Directors of the Bahrain Human Rights Society (hereinafter BHRS).

141. The BHRS has been working in the field of promoting and protecting human rights in Bahrain since 2001. The society has contributed to the development of human rights for almost ten years and is regarded as one of the most prominent societies working in this field. Having respected the work of the BHRS for many years, the Government of Bahrain regrets the accusation that the dissolution of the Board of Directors of the BHRS was related to the activities of the organization in defence of human rights in the country. The dissolution was based purely on administrative and legal measures. It was not motivated by BHRS's activities in defence of human rights, but was a result of committing habitually administrative and legal violations. The BHRS have carried out unlawful activities and cooperated with illegal bodies, along with engaging itself in political affairs away from human rights perception.

142. The BHRS refrained from condemning acts of violence and terrorism which aimed at compromising national security and abusing the country's stability, and at compromising national security and abusing the country's stability, and to justify such acts in contravention of the very basis of its articles of association, related to defence of human rights without discrimination, favouritism or biasness for any party. The society coordinated with some outlawed bodies known for their incitement to violence, terrorism and hatred of the regime within the framework of the so-called alliance for truth and equality. It was also apparent that BHRS combined political work with human rights-related activities, which resulted in lack of impartiality, professionalism and independence. BHRS's website contained several violations and acts in contravention to Legislative Decree No. 21 of 1989 with respect to social and cultural clubs and associations. As a social society, it was supposed to refrain from engaging in political activities as stipulated in article 18, which provides that the society may neither engage itself in politics nor enter into any financial speculations.

143. Further, the society has published unlawful materials on its website and having carried out activities which are harmful to security, civil peace and stability of the country,

it has thus violated article 3 of the abovementioned law, which stipulates “Every society established in violation of the public order or public norms or for any unlawful purpose or reason or with a view to damaging peace of the state or form of the government or its social order shall be null and void”. The BHRS also submitted false complaints to different human rights organizations and have spread provocative propaganda, news and false statements to destabilize public security and cause damage to public interests, along with filling false complaints to the Special Rapporteur on the promotion and protection of the right of opinion and expression and Special Rapporteur on the situation of human rights defenders, claiming that the Government had banned the BHRS from organizing a workshop related to human rights.

144. With regards to the dissolution of the Board of Directors of the BHRS, the ministerial order was a result of a proliferation of violations committed continuously by the society. Legislative Decree No. 21 of 1989 with respect to social and cultural clubs and associations governs the BHRS. Violations of provisions of this law include: article 16, BHRS failed to produce its annual budget and did not send its fiscal statements for auditing; article 32, BHRS failed to call for new elections for the Board of Directors; article 33, BHRS failed to notify the Ministry of Social Affairs prior to convening a General Assembly meeting; article 39, BHRS has no viable Board of Directors; and article 46, BHRS failed to provide the Ministry of Social Affairs with decisions taken by the Board of Directors.

145. With regard to the press conference of 28 August 2010, organised by the BHRS in the presence of the family members of the suspects including those of the abovementioned, the BHRS has exercised its constitutional and legal rights to strive for the protection of human rights. The Government of Bahrain considers such actions as an obligation and a duty to respect to protect and to fulfil human rights. The authorities of Bahrain have this conference and refrained from interfering with or curtailing the enjoyment of human rights for both BHRS and family members of the suspects. Bahrain is also bound to protect individuals and groups against human rights abuses, and it is grateful to human rights NGOs such as BHRS for being whistleblowers and drawing the Government’s attention to any human rights violations. Bahrain is also committed to fulfil human rights and it believes that the enjoyment of these rights are best achieved through the facilitation of human rights NGOs, hence it welcomes the organization of such conferences.

146. What was unfortunate in this press conference was an incident that was drawn to the attention of the Minister of Social Affairs by four journalists and three of the attendees. In the course of the press conference, the BHRS humiliated the journalists, sworn at them and ordered them to leave the hall. One reason for this was a question asked by one of the journalists to the BHRS regarding the refrain of the society from condemning the assassination attempt of a fellow journalist on 25 August 2010.

147. The journalists have sent separate letters to the Minister of Social Affairs condemning the unfortunate incident of the press conference. The journalists have argued that such attitude by the BHRS is an unacceptable violation of the fundamental principles set forth in article 19 of the International Covenant on Civil and Political Rights.

148. The BHRS, along with all other NGOs in Bahrain, reserve their rights of the legitimate and peaceful work in the defence of human rights as enshrined in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. They also preserve the right of freedom of expression and opinion, as enshrined in the Constitution of Bahrain. Legal action is only exercised against those who deviate from the scope of the legitimate and peaceful work in the defence of human rights and freedom of expression and recourse to the execution of acts amounting to the abuse of law.

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

Urgent appeal

150. On 15 October 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the Independence of Judges and Lawyers; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, sent a urgent appeal concerning the arrest and detention of Mr. **Ali Abdulemam**. Mr. Abdulemam is the creator and manager of the www.bahrainonline.org news website, and a blogger who regularly wrote articles regarding media freedom and freedom of expression in Bahrain.

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

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

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

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

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

156. The Ministry of the Interior has allegedly denied that Mr. Abdulemam's arrest was in any way related to his political views. However, since 5 September 2010 - the day following Mr. Abdulemam's arrest - the BahrainOnline.org website has been unavailable

both within Bahrain and abroad. Furthermore, it is feared that Mr. Abdulemam has been compelled to reveal the password for his Internet service.

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

Response from the Government

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

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

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

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

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

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

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

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

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

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

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

169. Mr. Abdulemam is charged with criminal offences. He preserves his right to be presumed innocent and is treated as such until proved guilty in a public trial according to law, at which he has all the guarantees necessary for his defence. In this connection, Bahrain restates its commitment to preserving the suspect's right to fair proceedings before an independent and impartial tribunal to determine the criminal charges against him. The

law guarantees the independence of the judiciary and the probity and impartiality of judges. In this context, attention is drawn to article 104 of the Constitution of Bahrain, which stipulates “No authority shall prevail over the judgment if a judge, and under no circumstances may the course of justice be interfered with.”

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

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

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

Urgent appeal

173. On 17 February 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal concerning the deaths of several people, including **Mr. Ali Abdulhadi al-Mushaima, Mr. Fadhel Salman al-Matrook, Mr. Issa Abdel Hassan, Mr. Mahmoud Makki, Mr. Ali Khudair and Mr. Hussaid Zayed** and the excessive use of force by security forces in the context of the ongoing peaceful protests. Since 14 February 2011, massive demonstrations have peacefully taken place across the country calling for democratic reforms, including political rights and freedoms, the release of all political prisoners, a new constitution and an elected government.

174. It was recalled that restrictions to fundamental freedoms and rights in Bahrain had been addressed in several urgent appeals, notably in the communication dated 20 August 2010 sent by the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment; the communication dated 27 August 2010 sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the communication dated 15 September 2010 sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the joint urgent appeal dated 15 October 2010 sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders.

175. According to the new information received, in the context of ongoing protests across the country, security officials had reportedly used tear gas, rubber bullets, shotguns and live ammunitions against peaceful demonstrators to contain the massive protests. Such excessive use of force had been carried out, at a short distance, against people who were not participating in the demonstrations, but were running away from the police in proximity to protests areas. Due to the excessive use of force, at least six deaths have been reported between 14 to 17 February 2011, with a high number of people injured.

176. On 14 February 2011, during a demonstration in al-Daih village, in the north of Bahrain, Mr. Ali Abdulhadi al-Mushaima, aged 27, and reportedly not a participant in the demonstrations, was allegedly shot at short range whilst walking out of his house. He was reportedly taken to al-Salmaniaya hospital in Manama and died one hour later.

177. On 15 February 2011, a funeral procession was organized to transfer his body from the hospital to the cemetery for burial. A high number of people had reportedly gathered at the gates of the hospital to join the procession. It has been reported that riot police used tear gas and shotguns to disperse the crowd. Consequently, a man named Mr. Fadhel Salman al-Matrook, aged 32, was severely injured and died later in hospital.

178. Furthermore, on the night of 17 February 2011, between 3:00 a.m. and 5:00 a.m. local time, peaceful demonstrators, gathered at Pearl Roundabout, in the centre of the capital Manama, have been reportedly attacked by security forces without insufficient warning in order to disperse the pro-reform protesters camp. This includes a large number of families, women and children. Subsequently, at least four people were allegedly killed, Mr. Issa Abdel Hassan, aged 61, Mr. Mahmoud Makki, aged 23, Mr. Ali Khudair, aged 52 and Mr. Hussaid Zayed. In this regard, the Ministry of Health has confirmed three deaths and the number of persons wounded as being 231 during the police operation. Moreover, we have received information on the presence of a high number of tanks and armoured vehicles on Pearl Roundabout.

179. It has also been reported that ambulances have been prevented from accessing the protests areas, that doctors and nurses providing medical assistance have been beaten, and this has led to protests by the medical workers themselves.

Response from the Government

180. In a letter dated 5 April 2011, the Government replied to the communication sent on 17 February 2011. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Urgent appeal

181. On 18 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the **worsening of the situation and excessive use of force against protesters by security forces in the context of the ongoing peaceful demonstrations**, which have been taking place across the country since 14 February 2011, calling for democratic reforms and fundamental freedoms.

182. According to the information received, since 14 February 2011, massive demonstrations have been peacefully taking place across the country calling for democratic reforms, including political rights and freedoms, the release of all political prisoners, a new constitution and an elected Government.

183. In the communication dated 17 February 2011, the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment appealed to the Government of Bahrain to seek clarification concerning the deaths of several people and the excessive use of force by security forces in the context of the ongoing peaceful protests when the alleged use of tear gas, rubber bullets, shotguns and live ammunitions against peaceful demonstrators have resulted in at least 6 deaths and a high number of people injured between 14 and 17 February 2011. It was noted that at the time of submission of the communication, no response had been received from the Government in relation to the circumstances regarding the cases of the persons named therein.

184. According to the new information received, on 15, 16 and 17 March 2011 respectively, following the introduction of a three-month state of emergency by the King of Bahrain on 15 March 2011, Bahraini police reportedly attacked a number of villages, including Sitra, Ma'amer, Ali, Buri, Salmabad, Nuwaidrat, Bani Jamra and Duraz, and the protest camp on Pearl Roundabout, to contain the massive protests using tear gas, rubber bullets and shotguns. It is alleged that automatic weapons may also have been used to shoot live ammunition at protesters and passers-by. Plainclothes security personnel have also reportedly been using clubs, knives, swords and rocks to attack protesters. The electricity supply, telecommunications and water in villages and the area around the roundabout was cut.

185. On 16 March 2011, the Pearl Roundabout, where most anti-government protesters were asleep, was attacked by the Bahrain riot police and plain-clothed security. Many demonstrators were beaten and wounded with rubber bullets and shotgun pellets. At least seven protesters have reportedly been killed during the clashes of 15 and 16 March 2011, and many demonstrators sustained gunshot injuries. On 17 March 2011, Mr. Mahmoud Makki Ali, Mr. Ali Mansour Ahmad Khudair, and Mr. Isa Abd al-Khusein, were shot dead after security forces opened fire on protesters. Mr. Isa Ali Ahmed al-Moamen died in the hospital from fatal injuries caused by live ammunition. Reportedly, 255 patients have been taken to hospital in the early hours of 17 March 2011 many with severe injuries. It is also reported that on 15 March 2011, the police attacked the medical personnel at the scene of the attack preventing them from carrying wounded people to hospitals and from having access to the protesters' camp in the roundabout. Several ambulance drivers were attacked by riot police with batons as they tried to reach the wounded; 4 paramedics who arrived to pick up the wounded were reportedly beaten by the police. Riot police reportedly blocked access to the Sitra Health Centre where many of the injured were taken, while leaving other injured people lying unassisted in the streets.

186. Furthermore, the Ministry of Interior Force of Bahrain is alleged to have commandeered and occupied Salmaniya hospital, the main hospital in Manama, and to be blocking access to it. A group of nurses and doctors who tried to leave the hospital were reportedly beaten. The electricity at the hospital has reportedly been cut off, endangering the lives of critical care patients. Additional reports have been received that security forces have attacked medical workers, and that the wounded are now being treated in mosques or in private homes. Further allegations have been received that security forces have occupied smaller state and private medical centres.

187. In this context, attention was brought to the Government to the statement issued by the UN High Commissioner for Human Rights on 17 March 2011, concerning the escalation of violence by security forces in Bahrain, in particular the reported takeover of hospitals and medical centres in the country, and the most recent communication dated 17 March 2011, sent by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

188. The Special Rapporteurs noted that Bahraini activists, human rights defenders, leaders of the protest movement and political parties reportedly continue to receive threats on social networking websites. On 17 March 2011, five opposition leaders, namely Mr. Hassan Mushaima, Secretary-General of the Movement of Liberties and Democracy; Mr. Ibrahim Shareef, the Secretary-General of the National Democratic Action Society; Mr. AbdulWahab Hussain, the President of the Alwafa Islamic movement; Mr. Kareem Radhi Hassan AlHadad; Mr. Abdul Jalil AlSankees, the Board member of the Movement of Liberties and Democracy; and Mr. Ali Al Ekri have reportedly been arrested by the security forces. It is also reported that on 15 February 2011, Mr. Mohammed al-Buflasa, a former military officer was detained by the Bahrain Defense Forces after he spoke at the Pearl Roundabout, criticizing the Government and supporting the protesters. His fate and whereabouts remained unknown until after 17 days when on 4 March 2011, authorities announced that Mr. al-Buflasa was to face trial for “breaching the Bahrain Defense Force law” without providing further information. Reportedly, on 17 March 2011, the General Command of the Bahrain Defense Force issued a statement about the detention of several leaders “of the sedition ring who had called for the downfall of the regime and had intelligence contacts with foreign countries [...], incited [...] for the killing of citizens and the destruction of public and private property, resulting in the undermining of the social peace, the loss of innocent lives and the terrorizing of citizens and residents”.

189. Further, the offices of the only opposition newspaper, Al Wasat, were allegedly attacked, and many NGO premises in the neighbourhood have been stormed in an attempt to arrest those who were trying to cover the event and provide news to local and foreign media outlets.

190. Given the restrictions on the means of communication, the denial of medical aid and medical care to the injured protesters, serious concern was expressed about their physical and mental integrity. In addition, concerns were expressed about the physical and mental integrity of Bahraini demonstrators, activists, lawyers, politicians who had been arrested since the demonstrations began.

Urgent appeal

191. On 22 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the situation of **Mr. Abduljalil Al Singace, Mr. Hassan Mushaima, Mr. Abdul Ghani Al Kanja, Mr. Abdulhadi Alkawaja, and Mr. Nabeel Rajab**. Mr. Al Singace is the head of the human rights office at Haq Movement. Mr. Mushaima is President of Haq Movement. Mr. Al Kanja is the

spokesperson for the Bahraini National Committee for Martyrs and Victims of Torture, Mr. Alkhawaja was, until recently, the Front Line protection coordinator for the MENA region, and Mr. Rajab is the President of the Bahrain Centre for Human Rights.

192. It was noted that the situation of the aforementioned individuals had previously been addressed in a number of communications to the Government sent on 2 February 2007, 19 February 2009, 5 March 2010, 20 August 2010, and 15 September 2010. Receipt of responses to the aforementioned communications transmitted by the Government was acknowledged, but the following information was brought to the Government's attention.

193. According to the new information received, on 17 March 2011, both Mr. Al Singace and Mr. Mushaima were arrested by the Bahraini security apparatus. The arrests allegedly took place in the aftermath of a security operation carried out by the security forces with the alleged objective of removing protesters from Pearl Roundabout, Manama. It is reported that their fate and whereabouts are unknown.

194. According to the information received, Mr. Al Singace was released from prison on 23 February 2011, in the wake of civil unrest in Bahrain. However, it is reported that the charges against him were not formally dropped. On 13 August 2010, Mr. Al Singace was arrested and detained upon his return to Bahrain from London where he reportedly spoke at the House of Lords about torture in Bahrain. According to the information received, Mr. Al Singace was put on trial for forming part of an alleged terrorist network. During the trial it emerged that Mr. Al Singace was allegedly subjected to torture and other forms of ill-treatment while in detention.

195. During his career as a human rights defender, Mr. Al Singace has actively engaged with the UN Human Rights Council as well as other UN human rights mechanisms, and has openly spoken at the international level about alleged human rights violations in Bahrain.

196. According to the new information received, Mr. Mushaima was charged with forming part of the same terrorist network as Mr. Al Singace, but was tried in absentia while he was in London receiving medical treatment.

197. Through his work as an activist, Mr. Mushaima has actively engaged with different UN bodies reporting about alleged human rights violations in Bahrain. He has also participated in the Universal Periodic Review of Bahrain before the Human Rights Council.

198. On 15 August 2010, Mr. Al Kanja was arrested and detained in Bahrain upon his return from London where he, along with Mr. Al Singace, addressed the House of Lords on torture in Bahrain. Mr. Al Kanja was also put on trial for forming part of an alleged terrorist group. It is alleged that he was subjected to torture and other forms of ill-treatment while in detention. On 23 February 2011, Mr. Al Kanja was released from prison however it is reported that the charges against him were not formally dropped.

199. As a human rights defender, Mr. Al Kanja has engaged with a number of UN human rights mechanisms, including the Universal Periodic Review of Bahrain before the Human Rights Council, and the Committee against Torture.

200. As well as being charged with forming part of an alleged terrorist group, Mr. Al Singace and Mr. Al Kanja were reportedly charged with "cooperation with international organisations".

201. On 10 March 2011, a number of social networking sites allegedly posted death threats against Mr. Al-Khawaja accusing him of treason. The messages reportedly contained personal information about Mr. Al-Khawaja including his address, phone number, personal identification number and profession. It is reported that such information is normally found on Bahraini National Identity Cards. Details about the type of car driven

by Mr. Al-Khawaja were also made available on the sites. Text messages were also circulated containing similar death threats against Mr. Al-Khawaja.

202. Through his work as a human rights defender, Mr. Al-Khawaja has openly discussed human rights concerns in Bahrain with a number of international human rights organisations including the UN.

203. Mr. Rajab has also been involved in reporting to the UN. He also participated in the Universal Periodic Review, the UN Human Rights Council, the Committee against Torture and the Committee against Racial Discrimination. He was the subject of a communication sent to your Government on 5 March 2010.

204. Concern was expressed for the physical and psychological integrity of Mr. Al Singace and Mr. Mushaima who have been arrested on 17 March 2011 by the security forces, whose fate and whereabouts remain unknown. Further concern was expressed for the physical and psychological integrity of Mr. Al Khawaja considering the content of the death threats recently made against him posted in a number of social networking sites. Concern is also expressed for the situation of Mr. Rajab and Mr. Al Kanja.

205. Serious concern was further expressed that the situation of the aforementioned persons may be linked to their work in the defence of human rights, in particular their cooperation with the UN bodies and its mechanisms.

Response from the Government to a communication sent earlier

206. In a letter dated 27 October 2010, the Government responded to the communication sent on 5 March 2010 concerning Mr. **Nabeel Rajab**, president of the Bahrain Center for Human Rights (BCHR), Mr. **Mohamed Al-Maskati**, president of the Bahrain Youth Society for Human Rights (BYSHR), and Mr. **Abdul Ghani Al-Khanjar**, spokesperson for the National Committee for Martyrs and Victims of Torture (NCMVT).

207. It is noted that the communication quite correctly makes no allegation of the government being involved – indeed Bahrain’s media is justifiably regarded as being impartial and independent. The government does not, and constitutionally cannot, seek to control the media and is therefore not in a position to characterise (whether as “smear campaign” or otherwise) the output of any media organization, particularly where that output involves the expression of opinion by private citizens. Further, the rights of freedom of opinion and expression are protected by Bahrain’s laws and Constitution, and the government takes its domestic and international commitments in this regard very seriously. Complainants are fully entitled to seek redress for any violations of rights through the Public Prosecutor’s Office, an independent body affiliated to the Ministry of Justice, and assurances are given that Bahrain’s prosecutorial, judicial and legal system treats all litigants equally.

208. The government believes that such judicial and other remedies should be exhausted, or at least seriously pursued, before alleged violations of rights can properly be raised internationally.

209. The government continues to welcome and engage domestically and internationally in our common endeavour to promote and protect human rights. The individuals referred to in the Communication are most certainly able to carry out their peaceful and legitimate human rights activities freely and without fear in Bahrain, and their close co-operation with Human Rights Watch (to which the Communication refers) bears testament to this. I would also note that the Human Rights Watch report in question was in fact launched in Bahrain, at a public meeting, equally freely and without any fear or restriction. This once again underlines the government’s commitment to freedom of expression and to protecting

legitimate human rights defenders, even in cases where we might strongly but respectfully disagree with what they say.

210. In this context, the government considers the allegations to be erroneous, and any attempt to present these claims as fact when, in reality, the allegations are strongly contradicted by facts set out above, is regrettable.

211. Finally, the opportunity is taken to reiterate the government's firm and unwavering commitment to the promotion and protection of human rights, including the rights to freedom of expression and opinion, and to complying with and respecting international human rights instruments.

Response from the Government to a communication sent earlier

212. In a letter dated 31 August 2010, the Government responded to a communication sent on 28 July 2008 concerning Messrs **Hassan Abdelnabi Hassan, Maytham Bader Jassim Al Sheikh** and **Abdullah Mohsen Abdulah Saleh** of the Unemployment Committee; Mr **Naji Ali Fateel** of the Bahrain Youth Society for Human Rights (BYSHR); Mr **Mohammed Abdullah Al Sengais**, head of the Committee to Combat High Prices; Mr **Ahmed Jaffar Mohammed Ali**, former member of the Unemployment Committee; and **Mr Ebrahim Mohamed Amin-Al-Arab**, founding member of the Martyrs and Victims of Torture.

213. In its letter, the Government informed that the facts as summarized in the letter are inaccurate. The accused were neither tried by a criminal court nor convicted because of their human rights work, but rather because they had participated in an illegal gathering at which they had been carrying iron bars and Molotov cocktails, set fire to a police vehicle and stole a firearm from the vehicle. The reasons given in the letter for their criminal prosecution and conviction are unsubstantiated and baseless.

214. When questioned by the Office of the Public Prosecutor, the five accused neither claimed that they had been mistreated nor filed any complaint in that regard. Nevertheless, the Office had them examined by a medical examiner in order to determine whether they had sustained any injuries. The reports by the medical examiner essentially confirmed that the accused had not been subjected to torture.

215. The five accused, together with others who are not human rights defenders, were brought before the High Criminal Court by the Office of the Public Prosecutor on charges of unlawful assembly, setting fire to a police vehicle, using force and violence against police officers, stealing a firearm and parts of a firearm from the vehicle and concealing and possessing unlicensed weapons. The Office of the Public Prosecutor based its decisions on a large amount of evidence, namely confessions by several of the accused, the testimony of several police officers, the findings of investigations, technical reports, and photographs showing the accused meeting, setting fire to the police vehicle and stealing the firearm from the vehicle. During proceedings before the High Criminal Court, lawyers for the accused asked for their clients to be referred to an independent medical panel for examination. The Court agreed and the accused were examined by the panel. Moreover, the Court allowed the accused to submit full evidence in their defence.

216. The medical examinations which the five accused underwent focused on old scars and bruises found on their bodies. Neither the medical examiner nor the panel determined that these were the result of torture. Medical examiners' independence is ensured by the requirement that they not be linked by kinship or blood ties to any party in the proceedings or by any other link that could influence the opinions that they are required to reach. Moreover, medical examiners who are not Government experts must declare, under oath, that they will carry out their duties honestly. Medical examiners may also be questioned about how they arrived at their opinions. An accused person who wishes to have an

independent medical examination must submit a request either orally or in writing to the competent authority, which may be the Office of the Public Prosecutor or the court hearing the case. The authority will grant the request promptly, if it determines that it is genuine and will not delay court proceedings. In such cases, the medical examiner conducting the examination will have the same powers as a medical examiner appointed by the Office of the Public Prosecutor.

217. The accused appealed against the judgement handed down by the High Criminal Court. The appeal filed by Mr. Ahmed Jaffar Mohammed Ali was dismissed by the High Criminal Appeals Court on 28 December 2008, as a royal decree had been issued granting him and others a pardon. The Court likewise dismissed the appeal lodged by the other four accused. Before handing down its verdict, and at the request of the accused, the Court heard testimony from numerous witnesses for the defence.

Observations

218. The Special Rapporteur thanks the Government for the responses received to most of his communications sent during the reporting period. However, he regrets that at the time of finalization of the report, no reply had been transmitted to his communications of 18 March 2011 and 22 March 2011, and to four communications sent in 2008 and 2007.

219. The Special Rapporteur remains deeply concerned about the human rights situation in Bahrain following the protests of 14 February 2011. In this regard, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Chair-Rapporteur of the Working Group on Arbitrary Detention, issued a joint press release on 18 February 2011 expressing alarm and shock by the number of peaceful protesters who have been injured or killed during the violent crackdown by the authorities.³

220. In another press release issued on 22 March 2011,⁴ jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on the situation of human rights defenders, Chair-Rapporteur of the Working Group on Arbitrary Detention, and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, concern was expressed that the Government of Bahrain has embarked on a path of multiple human rights violations amidst a dramatic deterioration of peace and security in the country. The Special Rapporteurs condemned the persistent use, on an even more intensive scale than a month ago, of the brutal tactics to quash non-violent protests. The Special Rapporteurs also noted increased incidents of serious human rights violations in the capital Manama, and urged the Government to immediately stop the violations, and to start an investigation and prosecution of those responsible.

221. The Special Rapporteur continues to receive information regarding the continued detention of journalists, bloggers, human rights defenders, teachers, lawyers, medical professionals, artists, activists and members of political bodies in Bahrain. He reiterates his call to the Government to fully guarantee the right to freedom of opinion and expression

³ "Bahrain / Libya: UN experts urge authorities to guarantee right to protest without fear of being injured or killed," media statement of 18 February 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10737&LangID=E>.

⁴ "Broken promises in Bahrain – UN experts question Government's human rights commitments," media statement of 22 March 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10881&LangID=E>.

and the right to peaceful assembly for all individuals in Bahrain, and to bring the perpetrators of human rights violations to account, particularly those responsible for assaulting and killing protesters.

Bangladesh

Urgent appeal

222. On 17 June 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal to the Government regarding the detention and reported ill-treatment of Mr. **Mahmudur Rahman**, Amar Desh's Editor. The Amar Desh, a Bangladeshi daily newspaper that regularly reports on corruption cases, was closed down the day before the detention of Mr. Rahman.

223. According to the information received, on 2 June 2010, at 4:00 am, agents of the Tejgaon police station entered the Amar Desh offices, arrested Mr. Rahman and took him to the Dhaka Cantonment Police Station (CPS) for interrogation. The day before, on 1 June 2010, the Tejgaon Thana Officer-in-Charge had raided the press office of Amar Desh and declared its closure.

224. On the same day of his arrest, Mr. Rahman was reportedly charged under Sections 419, 420 and 500 of the Penal Code for "cheating by personation", "dishonestly inducing delivery of property" and "defamation". Moreover, the Tejgaon Police Station filed another case against Mr. Rahman (Case No. 2(6)2010), as well as against the Amar Desh Deputy Editor, Mr. Syed Abdal Ahmed; the Assistant Editor, Mr. Sanjeeb Chowdhury; the City Editor, Mr. Jahed Chowdhury; the reporter, Alauddin Arif; and the office assistant Saiful Islam for, inter alia, "obstructing Government officials to perform their duties" during Mr. Rahman's arrest, under Sections 143, 342, 332, 353, 186, 506, 114 of the Penal Code.

225. On 6 June, while he was in custody, another case (Case No.5 (6) 2010) was filed against Mr. Rahman at the Kowali police station for, inter alia, "obstructing Government officials to perform their duties", under Sections 143, 186, 332, 353, 225B/34 of the Penal Code.

226. On 7 June, on the basis of the two latter cases, Mr. Rahman was placed under a four-day detention period. On 8 June 2010, the Magistrates Court No. 7 issued another four-day detention period in Uttara Model Police Station against Mr. Rahman for "printing banned leaflets" under Section 6(1) of the Anti Terrorism Act 2009, as well as an additional four-day detention period for "conspiring against the State" on the basis of a case lodged under Sections 121A ("waging war or attempting to wage war against the State"), 124A ("sedition") and 114 ("abettor present when offence is committed") of the Penal Code.

227. According to the information received, on 10 June 2010, Mr. Rahman reported that five or six men entered his cell, removed his clothes and then proceeded to hit him very hard with their elbows in his chest and back whereupon he lost consciousness. When he awoke, he found himself lying in the room of the Second Officer of the CPS.

228. On 12 June 2010, Mr. Rahman was brought before the Magistrates Court on the basis of Case No. 2(6)2010. He then reported that he has been subjected to acts of inhuman and degrading treatment while in detention. He was allegedly unable to stand on the dock and the Magistrate invited him to sit. The Magistrates Court ordered that Mr. Rahman be sent to jail and undergo a full medical check-up on the basis of jail regulations. The Magistrate also allowed Mr. Rahman's lawyers to meet him for half an hour.

229. On the same day, the police of the Detective Branch of Dhaka Metropolitan area submitted an application seeking a four-day remand to question Mr. Rahman regarding the case filed at the Uttara police station under the 2009 Anti-Terrorism Act. The remand was granted by the Magistrates Court. Mr. Rahman was reportedly taken to the Detective Branch offices in Dhaka on 12 June without any medical check-up being performed.

230. As a result of the above, Mr. Rahman has been on remand since 2 June 2010.

231. Concern was expressed that the arrest and charges against Mr. Rahman, and various staff working at the Amar Desh's daily newspaper, might be related to their activities as journalists and in defense of human rights. Further concern is expressed about the physical and mental integrity of Mr. Rahman and the allegations that he might have been subject to ill-treatment during his detention.

Response from the Government

232. In a letter dated 18 June 2010 and the 5 July 2010, the Government responded to the urgent appeal sent on 17 June 2010 as follows.

233. The Government reiterates its commitment to freedom of expression and its faith in a free media. The declaration of the daily newspaper in Bangladesh named "*Amar Desh*" was cancelled by the District Magistrate of Dhaka in accordance with Articles 5 and 7 (part 3) of the Printing Presses and Publications (Declaration and Registration) Act, 1973, on the basis of a complaint lodged by a former employee.

234. The former employee resigned as the publisher of the newspaper "*Amar Desh*" on 11 October 2009. Since his name continued to appear in the printer's line of the newspaper, he filed a written complaint with the office of the Deputy Commissioner, Dhaka. The Deputy Commissioner notified the acting Editor of the daily in order to take necessary action in this regard. Since no action was taken, the Deputy Commissioner's officer on 15 March 2010 issued a "show cause notice" on the acting Editor asking him to explain why appropriate action would not be taken against the daily for using the former employee's name as the publisher, even after his resignation and complaint.

235. The former employee on 1 June 2010 filed a case with the Tejgaon Industrial Area Police Station against Mr. Mahmudur Rahman, acting Editor of "*Amar Desh*" for illegally using his name as publisher of the daily.

236. Following the cancellation of the declaration, a writ petition was filed by the daily "*Amar Desh*" with the High Court. On 10 June 2010, the High Court stayed for three months the order closing the daily. Following an appeal against the stay order, the Appellate Division, on 15 June 2010, issued an order staying High Court's order for four weeks. Meanwhile, the daily "*Amar Desh*" published regularly from 11 to 15 June 2010. The matter is currently pending before the court.

237. It may be noted that in the above case, actions were taken in accordance with the law of the land and without any political considerations whatsoever. Both the print and electronic media in Bangladesh enjoy full freedom and media in Bangladesh continues to represent widely diverse and divergent opinions and points of view.

Urgent appeal

238. On 14 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the situation of **Odhikar** and, in particular, of **Mr. Adilur Rahman Khan**, its Secretary Advocate. Odhikar is a human rights organization based in Dhaka, which works documenting human rights violations in Bangladesh, including extrajudicial executions, deaths in custody,

torture, violence against women, freedom of expression and the situation of human rights defenders.

239. Odhikar was the subject of an urgent appeal sent by the Special Rapporteur on the situation of human rights defenders on 11 March 2010, and regret was expressed that to date, no response had been received regarding the aforementioned communication.

240. According to the information received, since October 2010, the activities of Odhikar and, in particular, of the Secretary Advocate, Mr. Adilur Rahman Khan, have been increasingly monitored by the Bangladeshi authorities. The increased surveillance of Odhikar allegedly follows the submission by the organization of various project proposals to the national NGO Affairs Bureau, an office which regulates NGO activities in Bangladesh. It is reported that the content of the aforementioned proposals did not please the authorities. An official from the NGO Affairs Bureau has reportedly warned Odhikar staff members to exercise caution while travelling, and to be aware that a legal case may be brought against them by the authorities.

241. It is also reported that following the submission of the project proposals, the offices of Odhikar have frequently been visited by officials from the Bangladeshi Police Special Branch and National Security Intelligence agents. The authorities have also reportedly made repeated phone calls to the offices of Odhikar inquiring about the work carried out by Odhikar, as well demanding information on the location of staff members and human rights defenders working there.

242. Odhikar often works in close contact with the United Nations and other international human rights organizations and bodies. In 2008, Odhikar submitted information to the Office of the High Commissioner for Human Rights in the context of the Universal Periodic Review (UPR) of Bangladesh by the Human Rights Council, which took place in February 2009, and has since featured in many international human rights reports. According to the information received, after the engagement with the UPR process, Odhikar was threatened and harassed by Government officials of different levels and authorities increased the monitoring of its activities.

243. Most recently, Odhikar has been campaigning for the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

244. Concern was expressed that the surveillance carried out by Bangladeshi security officials of the activities of Odhikar and of Mr. Adilur Rahman Khan, its Secretary Advocate, may be linked to its work by documenting human rights violations in Bangladesh. Further, serious concern was expressed that Odhikar may have been targeted because of its cooperation with international human rights organizations and the United Nations.

Observations

245. The Special Rapporteur thanks the Government of Bangladesh for the responses received to his communication sent on 17 June 2010 but regrets that the allegations that Mr. Mahmudur Rahman was subjected to torture and ill-treatment while in detention were not addressed. He regrets that, at the time of finalizing this report, no response had been received regarding the communication sent on 14 March 2011. He considers response to her communications an important part of cooperation by Governments, and urges the Government to respond to concerns raised by him with detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

Belarus

Urgent appeal

246. On 22 December 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal regarding **arrests and the detention of various candidates in the Presidential elections of 19 December 2010, over 20 journalists, and human rights defenders including those associated with the “Human Rights Defenders for Free Elections” campaign.** The “Human Rights Defenders for Free Elections” campaign is an initiative of the human rights organisation “Viasna”, also known as “Nasha Viasna” and the Belarusian Helsinki Committee, which aims to observe the presidential elections, monitor the election process with regard to Belarusian and international standards for free and fair elections, and keep the public, both within Belarus and internationally, informed about the election process.

247. “Viasna” has been the subject of communications sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders previously sent a joint communication on 14 May 2009 and 24 August 2009. The responses of the Government to these communications dated 2 July 2009 and 1 October 2009 were acknowledged. The Belarusian Helsinki Committee and members thereof have been the subject of various communications by mandate holders, the most recent of which was sent by the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 22 July 2008. Government reply to above-mentioned communication dated 18 August 2008 was acknowledged.

248. According to the information received, during the night of 19-20 December 2010, a number of political figures, at least 20 foreign and local journalists, as well as human rights defenders were arrested and detained during an alleged wave of arrests across Minsk.

249. Following the Presidential elections on 19 December 2010, it is reported that approximately 10,000 demonstrators gathered at Independence Square, Minsk, to protest against the result thereof. Opposition candidate **Mr. Vladimir Neklyayev**, who was among the protesters, was reportedly set upon by a number of unidentified men who began beating him while he was en route to Independence Square. He was hospitalised as a result of his injuries. However, it is reported that Mr. Neklyayev was later abducted from his hospital bed by men in plain clothing who did not produce any identification. Having removed Mr. Neklyayev from his bed, the unidentified men reportedly locked Mr. Neklyayev’s wife, who was present, into his ward before leaving. As of noon on 20 December 2010, his fate and whereabouts and condition were unknown. It is now reported that Mr. Neklyayev is being detained at the detention centre of the Committee for State Security.

250. A number of other presidential candidates were present at the protest and were arrested and detained by men in plain clothing. It is alleged that those arrested included **Mr. Andrey Sannikov, Mr. Vitaliy Romashevskiy, Mr. Nikolay Statkevich, and Mr. Grigoriy Kostusev.**

251. Later on in the evening of 19 December, at approximately 19:00, the following journalists who were covering the arrest of Mr. Neklyayev and his supporters were allegedly told by the police to stop working and lie face down in the snow: **Mr. Dmitry Lukashuk**, correspondent for Evroradio, **Ms. Yelena Yakzhik**, reporter for Solidamost, **Ms. Yulia Doroshkevich**, correspondent for Nasha Niva; **Mr. Andrei Lenkevich**, freelance photographer, and **Mr. Anton Taras** of the BelaPAN news agency. It has also

been reported that **Mr. John Hill**, a New York Times reporter, was hit in the face when he attempted to show his press pass to the riot police. The police officers allegedly seized the journalists' equipment and deleted photographs and recordings.

252. At approximately 22:00 on the same day, **Mr Aleh Gulak**, Chair of the Belarusian Helsinki Committee was reportedly arrested and detained by riot police while observing a demonstration organised by an opposition candidate, held directly in front of Government Headquarters. Mr Gulak was reportedly taken to Akrestine pre-trial detention facility before being placed in police custody at Pervomaysky district police station.

253. It was further reported that on 20 December 2010, at approximately 03:15 the headquarters of "Viasna", located in central Minsk, was raided by special security officers. The headquarters was searched and all electrical equipment was seized. Some time later at 03:45, members of "Viasna", **Mr. Valiantsin Stefanovich, Mr. Uladzimir Labkovich, Mr. Andrey Paluda, Mr. Zmitser Salaeu, Mr. Uladzimir Mikalaeu, Mr. Aleg Zhlutka, Mr. Kanstantsin Staradubets, Mr. Vital Charniauski** and **Ms. Nasta Loyka** were allegedly arrested and taken to Pervomaysky district police station where they were interrogated. They were reportedly released a short time later.

254. At approximately 04:40, the office of the website Charter 97 was also raided by police. **Ms Natalia Radina**, chief editor for Charter 97 was arrested and brought to the State Security Agency (KGB). The Charter 97 website reportedly remains inaccessible in Belarus, as well as the websites of Belaruspartisan and Gazetaby. It has also been reported that social networking sites such as Facebook, Twitter and Odnoklassniki have been intermittently inaccessible, and access to Google and Yahoo e-mail services has been blocked.

255. At 06:00 **Mr. Dimitry Bondarenko**, coordinator of the civic campaign "European Belarus" was arrested and detained in at a KGB prison.

256. At approximately 07:00 a group of police officers in plain clothing again tried to enter the headquarters of Human Rights Centre Viasna but were refused entry by staff members. The police officers then began to dismantle the doors in a bid to gain entry. Mr Ales Bialiatski, Chair of Human Rights Centre Viasna arrived at the headquarters and requested that the police officers present a search warrant, however they failed to do so. They left the premises some time later.

257. Other human rights defenders allegedly arrested include **Mr. Vladimir Loyko, Mr. Siarhei Sys, and Mr. Dmitri Solovyov**. They were reportedly detained at Pervomayski district police station.

258. Although the official number of people detained on 19-20 December has not been clarified, "Viasna" has reportedly estimated that as many as 400 individuals may have been detained throughout Belarus.

259. On 21 December 2010, the UN High Commissioner for Human Rights, Ms. Navy Pillay, expressed deep concern about the violence against and detention of opposition candidates and their supporters in the aftermath of the elections in the Republic of Belarus. The High Commissioner called on the Government to ensure that human rights defenders, journalists and civil society organizations are free from any harassment.

260. Concern was expressed for the physical and psychological integrity of the aforementioned journalists and human rights defenders. Further concern was expressed that the alleged raids, arrests and detentions may be related to their peaceful and legitimate activities in the defence of human rights, as well as the journalists' professional activities to report on matters of public interest.

Response from the Government

261. In a letter dated 10 January 2011, the Government responded to the urgent appeal sent on 22 December 2010 by providing information on the prison conditions of persons detained during the events in Minsk on 19 December.

262. The investigation department responsible for preliminary investigations, working under the Central Internal Affairs Department of the Minsk City Executive Committee, on 19 December 2010 instituted criminal proceedings under article 293, paragraphs 1 and 2, of the Criminal Code of Belarus in connection with the events that led to the mass disturbances in Minsk on that day.

263. As at 3 January 2010, 19 persons were held in the State Security Committee (KGB) remand centre on charges of deliberate organization of mass disturbances, accompanied by violence against individuals, rioting, destruction of property and armed resistance to the authorities, and of direct involvement in mass disturbances, contrary to article 293, paragraphs 1 and 2, of the Criminal Code.

264. Pursuant to inquiries, the preventive measure, in the form of remand in custody, taken against the accused, V. Rymasheuski and A. Dmitriev, was on 31 December 2010 commuted to travel restraints and a pledge of good behaviour. D. Vus and R. Kastusiou had been released earlier subject to travel restraints.

265. According to information from the law enforcement agencies, the procedures and conditions of confinement of persons held in custody in the KGB remand centre are in keeping with the Universal Declaration of Human Rights, adopted on 10 December 1948 by the General Assembly, and meet the requirements of Act No. 215-3, of 16 June 2003, on the procedures and conditions of confinement of persons in custody, and departmental regulations.

266. The accused and other persons were held in custody in common cells that complied with health and fire safety regulations. All the persons held in custody were provided with their own sleeping area, bedding, dishes and dining utensils. Hot meals were provided free of charge three times a day in accordance with existing legal standards. The accused made no complaints about the quality of the prepared meals.

267. The persons held in custody were allowed to exercise fully their right to counsel. Legal counsel was provided in the manner prescribed by the laws of Belarus.

268. The accused have access to the books and periodicals in the remand centre library and to publications and literature sent to them by family members or acquired through the detention centre administration. They are permitted to exercise for up to two hours a day and are entitled to eight hours of sleep at night. Virtually every cell is equipped with a television, enabling prisoners to watch programmes in accordance with their daily routine.

269. All persons detained in custody may receive parcels of clothing without restrictions and up to 30 kg of food per month.

270. Almost all the accused received at least two parcels during the detention period. In total, more than 50 parcels and 5 packages were delivered to them, containing over 400 kg of food, various personal effects, clothing and medicine.

271. Medical care is provided, and health and hygiene conditions ensured in the detention centre in accordance with domestic law: medical examinations are carried out daily, including by medical specialists. Where indicated, any necessary medical procedures are carried out and preventive treatment given, and free medication is provided to prisoners requiring it who do not have their own.

272. For example, one of the accused suffering from diabetes mellitus was provided with the costly medicines metformin and Diabetone as soon as he was taken into custody.

273. The administration and the medical staff make every effort to maintain a proper level of health and hygiene in the detention centre, with due regard for any risk to life or health that a person in custody may face.

274. All accused persons are given the opportunity to have the benefit of counsel.

275. In accordance with article 43 of the Act on the procedures and conditions of confinement of persons in custody and for the purpose of reviewing the claims of the detainees' family members, officials of the Office of the Procurator General of Belarus on 31 December 2010 verified the procedures and conditions of confinement of the persons in custody in the KGB remand centre and found no evidence of a breach of law. None of the accused, including the former presidential candidates, filed a claim or report on the actions of the remand centre personnel or the prison conditions during the verification exercise.

276. It was ascertained that the prison regime for the persons in custody complies with the regulations of the KGB remand centre. According to the conclusions received, all the persons in custody are in good health. They have been given access to their lawyers and relatives and deliveries are duly made. Additional medical personnel have been assigned to provide medical care on a 24-hour basis.

277. The conditions of confinement in the KGB remand centre of the persons charged with organizing mass disturbances on 19 December 2010 are thus in keeping with international law and national and departmental laws and regulations.

278. In a letter dated 19 January 2011, the Government provided additional information regarding the urgent appeal sent on 22 December 2010. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Urgent appeal

279. On 28 January 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the **request received by the Belarusian Helsinki Committee from the Ministry of Justice to submit a copy to it of the letter addressed to the Special Rapporteur on the independence of judges and lawyers**. The Belarusian Helsinki Committee is an independent, non-political, non-profit public association which works to promote and protect human rights providing legal assistance and regularly holding human rights seminars and training courses. We have also received information concerning alleged interference in the professional discharge of functions of lawyers in connection with the 19 to 20 December 2010, demonstrations.

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

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

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

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

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

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

286. The letter sent to Ms. Tamara Sidarenka, alleged that on 24 December 2010, during an interview she falsely represented that she was prevented from meeting her client and that such conduct undermined lawyers obligations to maintain professional and personal dignity and violated professional ethics of the legal profession. Ministry of Justice has reportedly ordered Ms. Sidarenka to take measures to prevent such misrepresentation of information. She was instructed to inform the Ministry on measures taken to implement the order by 15 January 2011, otherwise her license would be revoked.

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

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

289. Concern was expressed at the alleged acts of intimidation against the BHC for submitting information to the Special Rapporteur on the independence of judges and lawyers and for the interference in the discharge of the professional functions of lawyers.

Response from the Government

290. In a letter dated 1 February 2011, the Government responded to the urgent letter sent on 28 January 2011 as follows.

291. Information from the competent Belarusian authorities about the events in Minsk on 19 December 2010 and the use of preventive measures against the persons involved in them: on 19 December 2010, between 6.50 p.m. and 11.50 p.m., an unauthorized protest against the Belarusian presidential election results was organized and staged in Minsk. All told, the organizers of the protest mobilized some 3,000 persons.
292. The protest began with a march from various parts of the capital to October Square. The protesters blocked traffic and began to move towards the building of the President's Office, but were stopped by a State traffic police cordon.
293. Former presidential candidates A. Sannikov, M. Statkevich and V. Rymashevsky each spoke in turn at October Square and told the audience that they "were afraid of nothing and would stay to the end".
294. Rymashevsky demanded that President Alyaksandr Lukashenka come to the square and then announced the establishment of a Narodnaya Rada, or People's Council, composed of the presidential candidates of the current and past elections, as an "alternative government".
295. Sannikov said: "We will not allow the usurper to hold on to power. The elections were neither free nor fair. The results were rigged."
296. It is significant that the election results had not yet been announced at that time. The claim of electoral fraud, thus, had been rehearsed and was of a deliberately incendiary nature.
297. At 8.55 p.m., Sannikov, Statkevich and Rymashevsky led a group of demonstrators along the roadway to Independence Square. During the march several young persons used pyrotechnic devices, climbed up onto snow-removal equipment and attempted acts of provocation around State institutions (burning the national flag, shouting offensive slogans and inciting the State institution security guards to strike back).
298. Individual activists gathered directly on the square. Stankevich and Sannikov called on the demonstrators to "hold a rally for at least two days" and to "phone and invite friends and acquaintances to the protest".
299. Subsequently, the protesters were provoked into gross violations of public order. At 9.50 p.m., on Sannikov's call, the crowd, headed by Statkevich, Khalip and Kostusev, advanced towards the government building, which also houses the Central Election Commission and the National Assembly.
300. During this time, law enforcement officers, despite the unlawful acts of the demonstrators, remained calm and did nothing to impede their activities.
301. Within a half hour, between 10 p.m. and 10.30 p.m., the demonstrators drew close to the front of the government building, smashed windows, broke down doors and called for negotiations.
302. There is testimony that the opposition leaders at the time not only did nothing in their capacity as organizers to stop the protest as it took a violent and thus unlawful turn, but they also openly called on the crowd to defy the authorities and continue efforts to "enter the government building".
303. At 10.37 p.m., law enforcement officers began to drive the crowd back away from the building and at 11.50 p.m. the unlawful acts of the opposition were suppressed. The protesters used steel rods, crowbars, tyre irons and other objects to cause injury and fight on the street, which attests to the evident aggressive nature of the protesters' acts. As a result of the clash with the protesters, 87 militia officers required medical care for traumas of varying severity and 9 persons were hospitalized.

304. The protesters were arrested in accordance with domestic legislation and the relevant provisions of the International Covenant on Civil and Political Rights, as the protest on 19 December was neither peaceful nor authorized under the law. The term “human rights defender” cannot apply to persons taking part in a protest involving violence and disorderly conduct.

305. On 20 December 2010, the investigation department responsible for preliminary investigations, a unit of the Central Internal Affairs Office attached to the Minsk City Executive Committee, instituted criminal proceedings in accordance with article 293, paragraphs 1 and 2, of the Criminal Code (deliberate acts by unidentified persons aimed at organizing mass disturbances, or participation therein, accompanied by violence against individuals, rioting, destruction of property or armed opposition to the authorities).

306. Thirty-one persons, including Neklyayev, Sannikov, Statkevich, Radina and Bondarenko, were accused in this criminal case and remanded in custody. Also among the accused is Rymashevsky, who was remanded in custody as a preventive measure and has now been released on his own recognizance. There are several other persons, including Kostusev, with the status of suspect.

307. A preliminary criminal investigation into the matter is now being conducted.

308. Reasons for the remand in custody of former presidential candidate Neklyayev: on 19 December 2010, the law enforcement bodies of Belarus took a decision to verify intelligence information about a threat to public order (a risk that homemade explosives might be used by certain participants in the rally), including through the inspection of the vehicles of the protest organizers. Failing to comply with the legitimate demands of the State traffic police officers, Neklyayev took steps to block a State traffic patrol car, as is borne out by a video recording.

309. A scuffle broke out as a result of opposition from Neklyayev supporters, during which the presidential candidate, who was among those involved, sustained bodily injury and a head trauma and was hospitalized.

310. Smoke bombs, steel rods, stakes and other articles used as weapons were found in the course of an inspection of a vehicle belonging to a staff member of the public campaign entitled “Tell the Truth” (headed by Neklyayev).

311. On 6 January 2011, the Minsk Central District Court rejected Neklyayev’s lawyer’s appeal to modify the preventive measure against his client, as Neklyayev is accused of a particularly serious offence under article 293, paragraphs 1 and 2, of the Criminal Code.

312. Reasons for the remand in custody of Khalip and Radina and the searches of the offices of a number of media outlets.

313. According to information from the competent authorities of Belarus, on 19 December 2010 the investigation department responsible for preliminary investigations, a unit of the Central Internal Affairs Department attached to the Minsk City Executive Committee, opened a criminal investigation into the events that day that had led to mass disturbances, based on evidence of offences under article 293 (mass disturbances), paragraphs 1 and 2, of the Criminal Code.

314. On 20 December 2010, the investigation department responsible for pretrial investigations in the criminal case detained Irina Vladimirovna Khalip and Natalya Valentinovna Radina under article 108 of the Criminal Code (detention on grounds of direct suspicion). They were arrested and subsequently held in custody as a preventive measure (on 22 December 2010) solely on the basis of reliable information attesting to their direct involvement in offences under article 293, paragraphs 1 and 2, of the Criminal Code.

Accordingly, on 29 December 2010, Khalip and Radina were charged with organizing and participating in mass disturbances accompanied by rioting and destruction of property.

315. The accused persons' residence and Radina's place of work (the office of the Charter '97 Internet resource) were searched for objects and documents that could be pertinent to the criminal investigation, in accordance with the law of criminal procedure of Belarus. The searches were thus prompted by the need to obtain the relevant evidence (of guilt or innocence) and establish the truth of the matter.

316. The searches of the news offices of European Radio for Belarus, the Belsat satellite television channel and the newspaper *Nasha Niva* were also prompted by the need to find items and documents, above all video recordings, attesting to certain persons' organizing and participating in offences under article 293, paragraphs 1 and 2, of the Criminal Code. The computer equipment taken in the course of the search was not confiscated and will be returned to its owners after investigative measures are taken.

317. The following is worth noting in connection with the allegations made by some States that the rights of journalists (Khalip and Radina) were infringed during the events on the evening of 19 December in Minsk.

318. Khalip, a reporter covering Belarus for the Russian periodical *Novaya Gazeta*, had not applied for accreditation with the Ministry of Foreign Affairs of Belarus, which grants foreign journalists in Belarus accreditation on a regular basis, and thus had no legal grounds for engaging in journalistic work in the country.

319. Under domestic law, the Charter '97 website (www.charter97.org), of which Radina is press spokesperson, is not a media outlet. By definition, therefore, Radina had no legal grounds to engage in journalism, especially as a press spokesperson is not a journalist *per se*.

320. According to law enforcement bodies, Khalip and Radina are currently in good health. Proper medical care is available, if necessary, in the KGB pretrial detention facility, where they are being held in custody. The accused sought medical attention during their detention in the facility and, after proper consultations, no medication was prescribed.

321. Procedure for appealing against sentences for administrative offences: Belarusian law provides for an appeal against a court judgement involving an administrative offence.

322. Under article 12.1, paragraph 1, of the Administrative Code, a judgement involving an administrative offence may be appealed by the person against whom it has been pronounced, the victims and their representatives and counsel for the defence.

323. Under article 12.2, paragraph 4, of the Administrative Code, judgements that have not entered into force involving administrative offences may be appealed to a higher court.

324. Under article 12.11, paragraph 1, of the Administrative Code, a judgement that has entered into force involving administrative offences may be retried where an appeal is brought by persons referred to in article 12.1, paragraph 1, of the Code, if this is done before the judgement enters into force or if the procurator's office raises an objection.

325. To date, none of the protesters have lodged a complaint with the Office of the Procurator-General of Belarus about the administrative measures taken against them.

326. The Office has not received any appeal concerning the alleged use of physical or psychological coercion against representatives of the media or members of youth groups.

Urgent appeal

327. On 25 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of

human rights defenders sent an urgent appeal regarding **multiple allegations of harassment, arrests and interrogation of numerous human rights defenders in Belarus following the presidential elections held in December 2010.**

328. According to the new information received, on 19 January 2011, human rights defender and member of Viasna, **Mr. Andrei Paluda**, was allegedly summoned to the State Security Agency (KGB) Sklou district department where he was interrogated about his involvement in unauthorized street rallies held in the aftermath of the presidential elections.

329. On 27 January 2011, **Mr. Valiantsin Stefanovich**, co-chair of Human Rights Centre Viasna and participant in the Human Rights Defenders for Free Elections Campaign, was reportedly summoned for questioning at the local KGB office in Mazyr.

330. On 28 January 2011, **Ms. Natalia Radina**, editor of the pro-democracy news site charter97.org, was reportedly released from detention. She had been arrested on 20 December 2010 when police raided the offices of the news site. Reportedly her passport has now been confiscated and she has been forced to relocate from Minsk to Kobrin, where she is not allowed to leave the town and must report to the police daily.

331. On 14 February 2011, **Mr. Ales Bialiatski**, president of Human Rights Centre Viasna and vice-president of the International Human Rights Federation (FIDH), was summoned by phone to present himself at the office of the Public Prosecutor. It is reported that on the same day, Mr. Bialiatski was also given a written warning by the Public Prosecutor which stated that the work carried out by Viasna was in breach of Belarusian legislation, based on the fact that the organization is not registered with the Ministry of Justice. It is reported that on 12 August 2009, the Belarusian Supreme Court denied Viasna registration with the Ministry of Justice. This contravenes a recommendation made in July 2007 by the United Nations Human Rights Committee which held that the dissolution of Viasna violated Article 22.1 of the International Covenant on Civil and Political Rights, of which Belarus is a party, and recommended that the complainants “be entitled to an appropriate remedy, including the re-registration of Viasna”.

332. Prior to the summons of Mr. Bialiatski, on 17 January 2011, at approximately 15:00, three officers of the KGB searched the headquarters of Viasna in Minsk. It is reported that the search warrant made reference to the events which took place in the aftermath of the presidential elections in December 2010. During the search in January, Mr. Bialiatski was reportedly arrested and other staff members were forced to leave the premises and a computer was seized.

333. Information on new cases was also raised, as follows. On 19 January 2011, the home of **Ms. Raisa Mikhailouskaya** was raided by KGB officers. Ms. Mikhailouskaya is the leader of the Centre for Human Rights, Minsk. It is alleged that the offices of Human Rights Centre Minsk were also raided by KGB officers and computers were seized.

334. Allegedly, on 21 January 2011, the home of **Mr. Uladzimir Tseliapun**, human rights defender, was raided by the KGB officers. It is reported that the officers seized his personal computer and a number of DVDs. On 14 February 2011, it is reported that Mr. Tseliapun received a summons to present himself at the local KGB office.

335. On 26 January 2011, it is reported that local KGB officers in Homiel, searched the private residence of human rights defender, **Mr. Leanid Sudalenka**. During the search a notebook, net-book, and computer were seized.

336. On 29 January 2011, **Mr. Aleh Vouchak**, legal assistant at the Centre for Human Rights, Minsk, was reportedly interrogated by Frunzienski police officers about a criminal case concerning mass riots on 19 December 2010.

337. On 29 January 2011, it was reported that **Ms. Iryna Khalip**, a human rights journalist was released from pre-trial detention and placed under house arrest. It is alleged that there were two KGB officers present at all times who ensured that Ms. Khalip did not make contact with the outside world. Ms. Khalip's husband, Mr. Andrey Sannikov, remains in detention. It is reported that Ms. Khalip was arrested on 19 December 2010, while giving an interview to a Russian radio station. During the interview she stated that the riot police employed violence to break up a demonstration which following the presidential elections. It is alleged that her husband was badly beaten by police during the break-up of the demonstration. According to the new information received, both Ms. Khalip and Ms. Radina were obliged to sign a document which stated that they would not disclose any information about their detention or criminal charges brought against them.

338. On 15 February 2011, **Ms. Nasta Loika**, lawyer with Human Rights Centre Viasna, and a participant in the International Youth Human Rights Movement, received various phone calls from an investigator of military counter intelligence after which she agreed to meet with one of the officers, who reportedly invited her to become an informant.

339. On 21 February 2011, the High Commissioner for Human Rights issued a press release in which she expressed her deep concern about the current situation for human rights defenders in Belarus, particularly concerning those facing trial for exercising their right to peaceful assembly and freedom of expression.

340. Concern was expressed regarding the situation of the above-mentioned persons as well as about the human rights defenders community in Belarus in the aftermath of the period of unrest which followed the presidential elections in December 2010. Serious concern was expressed regarding allegations that human rights defenders are being arrested, detained and harassed by the security forces, including through restrictions on their movement, as a result of their legitimate work in the defence of human rights, in particular of their activities during the presidential elections in December 2010. Further concern was expressed that raids carried out on the offices and private residences of human rights defenders as well as the seizure of material and equipment, may hinder them from carrying out their legitimate work.

Observations

341. The Special Rapporteur thanks the Government for the detailed responses received to his communications sent during the reporting period. However, he regrets that at the time of finalizing this report, the Government had not transmitted a response to his communication of 25 February 2011, and to 13 communications sent earlier in 2008, 2006 and 2004.

342. The Special Rapporteur remains concerned about the human rights situation in Belarus since the presidential election of 19 December 2010, and in particular regarding reports of increasing harassment of journalists, media outlets and human rights defenders. He urges the Government to fully guarantee all individuals' right to freedom of opinion and expression as well as media diversity and pluralism.

Burundi

Allegation letter

343. On 21 May 2010, the Special Rapporteur, jointly with the Independent Expert on the situation of human rights in Burundi, and the Special Rapporteur on the situation of human rights defenders sent an allegation letter concerning **Ms. Neela Ghoshal**, Human Rights Watch's researcher in Burundi.

344. According to the information received, on 18 May 2010, the Minister of Foreign Affairs of Burundi informed Ms. Ghoshal in a letter that the Government had decided to cancel Ms. Ghoshal's status as the representative of Human Rights Watch in Burundi and demanded that she cease her activities and leave the country.

345. The decision of the Government was reportedly based on the report that Human Rights Watch issued on 14 May 2010 regarding escalating violence in the run-up to the elections. The report documented instances of violence carried out by and against members of political parties, which reportedly was not properly investigated by the police.

346. Concern was expressed that the decision to cancel the work permit of Ms. Neela Ghoshal and to order her to leave the country might be directly related to her peaceful activities in defence of human rights, in particular her activities as a researcher of Human Rights Watch.

Observations

347. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to his communications of 21 May 2010, and to earlier communications sent on 26 November 2009, as well as to five communications sent in 2008. He considers response to his communications an important part of cooperation by Governments with his mandate. He urges the Government to respond to the concerns raised by him, and provide detailed information regarding investigations undertaken as well as protective measures taken.

Cambodia

Urgent appeal

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

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

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

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

352. It has been alleged that the official investigation report did not confirm that the police arrested the correct man since investigators identified the suspect in the alleged

phone calls as “Mr. L. Sokly,” a Vietnamese national living in Phnom Penh’s Russei Keo district. Mr. Sokchouen is a Khmer national living in the Sen Sok district.

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

354. According to the information received, the evidence provided by the police against Mr. Sokchouen consisted of a list of phone numbers claiming Mr. Sokchouen and Mr. Tach Khong Phoung had called each other. Furthermore, the judge reportedly relied entirely on written statements and four alleged witness statements from police officers, all of which were produced by the prosecutor. It has been reported that none of these individuals were called to court by the investigating judge or cross-examined by the defence.

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

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

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

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

Allegation letter

359. On 6 October 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegations to the Government concerning the situation of Mr. **Ath Thorn**, President of the Cambodian Labour Confederation (CLC); Ms. **Morm Nhim**, President of the Cambodian National Confederation (CNC) and Mr. **Tola Moeun**, Head of the Labour Programme at the Community Legal and Education Training Centre (CLEC).

360. According to the information received, on 15 September 2010, it was announced that law suits for inciting garment workers to strike would be filed against a group of nine people, including the above mentioned union leaders and labour activists – Mr. Ath Thorn, Ms. Morm Nhim and Mr. Tola Moeum. The strike was reportedly scheduled to take place between 13 and 18 September 2010, but it was postponed due to the alleged invitation to the CLC and CNC to attend a negotiation meeting at the MoSalvy on 27 September 2010.

361. Previously, on 23 July 2010, Mr. Ath Thorn was reportedly warned that he would face criminal proceedings if he continued to oppose the minimum wage decision. Furthermore, in mid-August, Mr. Ath Thorn allegedly received a warning not to go out at night. According to the information received, on 17 August 2010, an assistant of the union leader received a phone call from an unidentified caller concerning Mr. Ath Thorn's activities and actions relating to wages for garment workers. Around the same date, Mr. Tola Moeun was reported that union leaders and campaign supporters were likely to be charged with incitement. In addition, on 28 August 2010, the CLC received the following anonymous phone call stating: "Please tell all your supervisors to not be strong. Be careful".

362. Concern was expressed that the prosecution of Mr. Ath Thorn, Ms. Morm Nhim and Mr. Tola Moeun, and the threats against the CLC, may be related to their legitimate activities in supporting workers' rights in Cambodia.

Allegation letter

363. On 3 February 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights in Cambodia and the Special Rapporteur on the situation of human rights defenders, sent a letter of allegations regarding Mr. **Reach Seima**, a farmer who has been representing a group of 64 co-villagers contesting what they regard as encroachment on their lands by a private company; and Mr. **Sam Chankea**, provincial coordinator of the non-governmental organization ADHOC who has been assisting the farmers to seek the protection of their rights through existing legal avenues. Both were convicted of defamation on 17 and 18 January 2011 respectively in Kompong Chhnang province. These convictions took place in the context of a land dispute that began in 1996 in Ta Ches commune, Kompong Tralach district in Kompong Chhnang province.

364. According to information received, on 26 December 2009, Mr. Reach Seima and Mr. Sam Chankea were quoted in a Radio Free Asia (RFA) broadcast reporting on the ongoing land dispute between the villagers and KDC International. KDC International is a company owned by Ms. Chea Kheng, the wife of Mr. Suy Sem, the Minister of Industry, Mines and Energy. The company purchased several hundreds hectares of land from local farmers, but in the process, appropriated plots of land belonging to 108 families. These villagers had no intention to sell their land. They filed complaints to the local, district and provincial authorities, as well as to the National Assembly and the National Authority on the Resolution of Land Conflicts, but to no avail. They filed several complaints with the provincial court, which took no action to resolve the dispute.

365. In December 2009, the company reportedly brought machinery to work on the land, which prompted renewed protest by the villagers. A reporter from RFA investigated the case and interviewed Mr. Seima and Mr. Chankea. In the broadcast, Mr. Seima explained that the land was in dispute before the court and that since the latter had not decided who the land belonged to, the company should not work on the land. He also explained that since the beginning of this unresolved land dispute, the villagers had lost their land, and with it their means of livelihood and food shortages. In the broadcast, Mr. Chankea stated that "what the company has done violates the law because the court has yet to rule on the merits of the case. Therefore the company should suspend the activity and await the court

decision". RFA also interviewed the local representative of the company who declined to respond.

366. Following a meeting on 25 July 2010, between the company, the villagers and Mr. Sam Chankea which failed to resolve the dispute, KDC International accused both Mr. Seima and Mr. Chankea of disinformation and defamation and filed a complaint to the court to that effect. The Kompong Chhnang Provincial Court proceeded with the two complaints separately. It charged and convicted Mr. Seima of defamation on 17 January 2011, under Article 305 of the new Penal Code. It sentenced him to pay 10 million riels in fine and compensation to the company. Mr. Seima faces six months in prison if he does not pay the fine.

367. The following day, on 18 January 2011, Mr. Chankea appeared before the same court and was convicted of defamation under the same article of the penal code, and ordered to pay 4 millions riels in fine and compensation. Mr. Chankea faces three months' imprisonment if he does not pay the fine.

368. Concerns were expressed that the conviction of Mr. Seima and Mr. Chankea may be related to their legitimate human rights activities, in particular in the peaceful exercise of their right to freedom of opinion and expression.

Urgent appeal

369. On 22 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in Cambodia, sent an urgent appeal regarding the case of Mr. **Seng Kunnaka**, a staff member of the United Nations World Food Programme, who was convicted of criminal incitement by Phnom Penh Municipal Court on 19 December 2010, and was sentenced to six months' imprisonment and a fine of 1 million riels.

370. According to the information received, on 17 December 2010, Mr. Kunnaka was reportedly arrested and taken into custody in Russei Keo district police for questioning for 48 hours. On 19 December 2010, he was tried by the Phnom Penh Municipal Court under articles 494 and 495 of the new Penal Code, which recently entered into force. Article 495 prohibits persons from directly inciting others to commit a criminal act, while article 494 defines speeches, writing or sketches, or audio-visual communications as acts of incitement, provided they are committed in public.

371. Mr. Kunnaka was convicted for printing information materials from an internet website named Khmer Information media and shared them with two colleagues in his workplace. Khmer Information Media is a website linked to the political opposition which carries information and opinions critical of the Government's policies and practices. The materials appear to include caricatures of political leaders, which were called "traitors". Mr. Kunnaka did not encourage the persons with whom he shared the materials to take any action against any particular person or the Government. His action of sharing printed materials with his colleagues does not seem to have been accompanied by provocation of any kind. Based on the facts of the case, there is reportedly no evidence to suggest that Mr. Kunnaka had any intention to distribute this information as a call to action against the Government or any other person. In addition, he shared the materials he printed at his workplace and not in a public place.

372. It was further reported that observers were not authorised to attend the trial proceedings, which were held in camera. The trial took place on a Sunday, two days after Mr. Kunnaka's arrest, when courts are normally closed, except for exceptional cases.

373. Concerns were expressed that the conviction of Mr. Kunnaka may be related to the exercise of his constitutional right to freedom of opinion and expression and to seek,

receive and communicate information in a peaceful manner. Concern was also raised that article 495 of the new Penal Code may have been interpreted to curtail the constitutional exercise of freedom of opinion, expression and information, rather than to protect the public from the commission of any crime.

Observations

374. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to any of the communications sent during the reporting period dated 14 September 2010, 6 October 2010, 3 February 2011, and 22 March 2011. He also regrets that no response to the communications sent during the previous period dated 26 March 2009, 3 April 2009, and earlier communications sent in 2008, 2007, 2006 and 2005. The Special Rapporteur considers response to his communications to be an important part of the cooperation between governments and his mandate and as such requests that the Government of Cambodia provide details about the issues raised in the aforementioned communication at its earliest convenience.

375. The Special Rapporteur reiterates his concern regarding restrictions to the right to freedom of opinion and expression in Cambodia, including the use of criminal laws on defamation and disinformation to suppress opinions and information that are critical of the Government. Additionally, the Special Rapporteur remains concerned by reported acts of intimidation, arrests and judicial harassment of human rights defenders.

376. The Special Rapporteur urges the Government to take the necessary measures to decriminalize defamation, and to promote a climate of tolerance of diverse views and opinions, including those that are critical of the powerful.

Cameroon

Appel urgent

377. Le 8 avril 2010, la Rapporteuse spéciale, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, a envoyé un appel urgent sur la situation de Mme **Maximilienne Ngo Mbe**, Secrétaire Générale de l'association Solidarité pour la promotion des droits de l'homme et des peuples (PRODHOP) et Directrice Exécutive du Réseau des défenseurs des droits humains de l'Afrique Centrale (REDHAC), M. **Alex Gustave Azebaze**, journaliste et membre du PRODHOP, et M. **Simon Hervé Nko'o**, journaliste au sein de l'hebdomadaire *Bebela*.

378. Selon les informations reçues, le 20 mars 2010, Mme Maximilienne Ngo Mbe aurait reçu une lettre anonyme la menaçant dans les termes suivants : « Vous avez intérêt à vous taire. Sinon, même votre travail va finir. Vous allez payer très cher par tous les moyens pour tous ce que vous faites pour salir l'image du Président de la République ». Par ailleurs, en août 2009, en l'absence de Mme Maximilienne Ngo Mbe, un inconnu se serait introduit dans son domicile et en février 2009, un de ses enfants aurait fait l'objet de menaces anonymes.

379. M. Alex Gustave Azebaze serait poursuivi pour 'propagation de fausses nouvelles' et 'détention illégale des documents' suite à ses dénonciations relatives au procès pour corruption, présenté comme inéquitable, intenté contre d'anciens ministres et fonctionnaires arrêtés dans le cadre de l'Opération Epervier.

380. Enfin, M. Simon Hervé Nko'o aurait été détenu incommunicado du 5 au 12 février 2010, prétendument pour avoir joué un rôle dans des enquêtes dans le cadre d'une affaire

de détournement de fonds publics. M. Simon Hervé Nko'o aurait rapporté des actes de torture perpétrés à son encontre, en utilisant de l'eau, en le privant de sommeil et en l'exposant au froid pendant sa détention. Par ailleurs, il aurait été sévèrement battu sur la plante des pieds, comme l'attesterait un certificat médical.

381. De sérieuses craintes ont été exprimées quant au fait que les menaces contre Mme Maximilienne Ngo Mbe et sa famille, les poursuites contre M. Alex Gustave Azebaze et la détention incommunicado de M. Simon Hervé Nko'o et les actes de torture qu'il aurait subis, soient liés à leurs activités de promotion et de protection des droits de l'homme, et ce dans l'exercice de leur droit à la liberté d'opinion et d'expression.

Appel urgent

382. Le 12 mai 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation sur le décès de M. **Germain Cyrille Ngota Ngota**, dit **Bibi Ngota**, directeur de publication de Cameroun Express, et la situation de MM. **Serge Sabouang** et **Robert Mintsa**, respectivement directeurs de publication des bimensuels *La Nation* et *Le Devoir*, et **M. Hervé Nko'o**, journaliste à l'hebdomadaire *Bebela*.

383. Selon les informations reçues, le 5 février 2010, MM. Ngota, Mintsa et Nko'o auraient été arrêtés par des éléments de la Direction générale des renseignements (DGRE). Un jour plus tard, M. Sabouang aurait été arrêté à son tour. Les quatre journalistes auraient été arrêtés suite à une plainte de M. Laurent Ezzo, Secrétaire général de la présidence de la République, pour « faux et usage de faux et imitation de la signature de hauts responsables de la République ». Il est allégué que M. Mintsa avait sollicité une audience avec M. Ezzo afin de porter à sa connaissance un document présenté comme portant sa signature et attribuant des paiements suspects à certains hauts responsables dans l'administration dans le cadre de l'achat d'un bateau-hôtel par L'Etat camerounais.

384. Il est allégué que les quatre journalistes auraient été torturés dans les services de la DGRE jusqu'au 12 février, jour de leur libération. M. Soubouang aurait reçu 50 coups et aurait été forcé de dormir à même le sol. Actuellement M. Soubouang souffrirait de douleurs dans le dos et de palpitations cardiaques et aurait des difficultés à marcher. Quant à M. Mintsa, celui-ci présenterait des troubles du comportement et souffrirait de nombreuses douleurs et de vertiges. A ce jour, M. Nko'o vivrait dans la clandestinité.

385. Le 28 février 2010, MM. Sabouang et Mintsa auraient été arrêtés par des éléments de la police judiciaire et détenus jusqu'au 9 mars, avant d'être placés en garde à vue dans les locaux du commissariat central du 9 au 10 mars, puis transférés le 10 mars à la prison centrale de Kondengui à Yaoundé. M. Mintsa aurait déposé une demande de mise en liberté sous caution, qui aurait été refusée.

386. Le 10 mars 2010, M. Ngota aurait été arrêté alors qu'il se faisait soigner à l'hôpital de Biyem Assi à Yaoundé. Il aurait été incarcéré à la prison centrale de Kondengui à Yaoundé. Dans la nuit du 21 au 22 avril 2010, M. Ngota serait décédé des suites de mauvaises conditions de détention. M. Ngota souffrait d'hypertension et de fortes poussées de fièvre. M. Ngota aurait été contraint de dormir à même le sol en l'absence de lit pour les nouveaux détenus. Lorsqu'il pleuvait, le sol de la cellule était trempé et M. Ngota, affaibli, ne pouvait plus se lever ; ses co-détenus marchaient alors sur lui pour sortir de la cellule. Une demande pour changer M. Ngota de cellule avait été adressée au Procureur de la République par des amis de celui-ci, mais cette demande avait été déboutée. Le Gouvernement aurait prescrit l'ouverture d'une enquête judiciaire afin de clarifier les circonstances entourant le décès de M. Ngota.

387. De graves préoccupations ont été exprimées quant au décès de M. Ngota au cours de sa détention préventive. Des craintes similaires sont également exprimées quant à la situation physique et psychologique de MM. Sabouang, Mintsa et Nko'o.

Réponse du Gouvernement

388. Dans une lettre en date du 3 juin 2010, le Gouvernement que M. Germain Cyrille Ngota Ngota a été interpellé par la Police Nationale, présenté devant un Juge d' Instruction et mis en détention provisoire par celui-ci, ainsi que deux autres de ses co-accusés, dans les locaux de la Prison Centrale de Yaoundé, non point en sa qualité de journaliste, ni même du fait de ses articles de presse et encore moins comme défenseur des droits de l'homme au Cameroun, mais bien dans le cadre d'une affaire de droit commun relevant strictement de la sphère de sa vie privée mais gravement attentatoire aux lois et règlements de la République et ce pour les chefs d'inculpation suivants : faux, usage de faux, imitation de signature, falsification du Sceau de l'Etat, tentative d'extorsion de fonds, de chantage et diffamation. Sitôt connue la nouvelle du décès de M. Ngota Ngota, le Président de la République du Cameroun a aussitôt diligenté une enquête indépendante incluant notamment les membres de la propre famille du disparu aux fins d'élucider les circonstances exactes de cette disparition. Une copie de ce rapport sera envoyée au Rapporteur spécial dès que celui-ci aura été rendu disponible.

Réponse du Gouvernement à une communication envoyée précédemment

389. Dans une réponse en date du 21 juin 2010, le Gouvernement a apporté des précisions à une communication envoyée le 13 mars 2009 sur les **affrontements qui ont opposés les forces de police camerounaises à des manifestants, entre le 25 et le 29 février 2008**. Le Gouvernement a en effet transmis un rapport de 14 pages sur la crise sociale de février 2008 au Cameroun.

Observations

390. Le Rapporteur spécial remercie le Gouvernement de sa réponse, mais regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 8 avril 2010, 7 janvier 2009, 14 octobre 2008, 7 septembre 2005, 10 décembre 2004, 13 octobre 2004, 16 juillet 2004, 4 juin 2004, 7 avril 2004, 25 février 2004 et 4 décembre 2003. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits.

391. Le Rapporteur spécial demeure préoccupé par le sort de MM. Sabouang, Mintsa et Nko'o et demande à nouveau au Gouvernement de lui fournir des informations quant à leur situation.

Chile

Carta de alegaciones

392. El 15 de octubre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, y el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes enviaron una carta de alegaciones señalando a la atención urgente del Gobierno la información recibida en relación con la situación del Sr. **Cristian García Quintul** y otros activistas indígenas Mapuches de la

municipalidad de Puerto Montt, Chile. El Sr. García Quintul es Presidente de la Asociación Newen Llifken, una organización indígena Mapuche.

393. Según la información recibida, el 18 de septiembre de 2010, un contingente de Carabineros habría impedido manifestarse a un grupo de activistas Mapuche, entre ellos el Sr. García Quintul, y habría hecho uso excesivo de la fuerza con algunos activistas al llevar a cabo varias detenciones policiales. En este contexto, el Sr. García Quintul habría sido víctima del uso desmedido de la fuerza así como de amenazas y hostigamiento judicial por parte de oficiales Carabineros.

394. Según se informa, aproximadamente a las 10:30 de la mañana del día 18 de septiembre, un contingente de Carabineros habría impedido el acceso a un grupo de activistas Mapuche, incluyendo miembros de organizaciones y comunidades diversas, que caminaban pacíficamente hacia la Plaza de Armas de Puerto Montt. Al llegar a la calle Quillota con Urmeneta, el grupo Mapuche habría sido interceptado por dicho contingente de Carabineros, el cual se encontraba en las inmediaciones de la Catedral. Cuando los dos grupos se habrían encontrado, se habría generado una discusión en la que miembros del grupo de activistas habrían preguntado por qué no se les dejaba pasar a la Plaza de Armas. Un oficial Carabinero de alto rango y a cargo del dispositivo policial habría justificado la prohibición, diciendo "...yo soy quién tiene la autoridad y decido si les doy o no acceso a la Plaza de Armas". Dada dicha respuesta, el Sr. Eric Vargas, un Lonko Mapuche, habría denunciado el supuesto abuso de autoridad y violación del derecho de reunión ante los medios de comunicación presentes.

395. Según informes recibidos, posteriormente, dicho oficial Carabinero habría dado la autorización a viva voz de que el grupo de defensores podía pasar. No obstante, segundos más tarde, el mismo oficial habría dado orden a los funcionarios de las fuerzas especiales Carabineros de que detuvieran inmediatamente a todos los activistas y que les subieran al autobús policial. Seguidamente, se alega que varios Carabineros, incluyendo personal vestido de civil, habrían cogido violentamente al Sr. Cristian García Quintul, reduciéndole por la espalda e inmovilizándolo, supuestamente con golpes de pies y puños en piernas, brazos y rodillas, los cuales le habrían causado lesiones de mediana gravedad. Además, se alega que le habrían tirado del pelo y las orejas y le habrían torcido las muñecas. Se alega asimismo que el Sr. García Quintul habría sido golpeado, insultado y amenazado de nuevo después de ser introducido en el vehículo policial.

396. Seguidamente, según las alegaciones recibidas, los Sres. García Quintul y Vargas, junto con la Sra. Mónica García Quintul, hermana del Sr. García Quintul, habrían sido trasladados a la 2º Comisaría Policial de Puerto Montt sin serles leídos sus derechos ni ser informados de las razones de su detención. En dicha comisaría los oficiales les habrían quitado sus pertenencias y, después de llevarles al Hospital Base de Puerto Montt para constatar lesiones, les habrían metido en el calabozo.

397. Aproximadamente a las 14:30 de ese mismo día, tras la intervención de su abogado, el Sr. Vargas y la Sra. García Quintul habrían sido puestos en libertad. No obstante, el Sr. García Quintul habría permanecido detenido acusado de agresión a un carabinero, por lo que más tarde le habrían trasladado al Recinto Penitenciario de Alto Bonito. Sin embargo, según las alegaciones recibidas, existirían varios documentos gráficos que mostrarían que habría sido muy difícil para el Sr. García Quintul agredir a un carabinero debido a la manera en que fue inmovilizado durante su arresto. Según se informa, durante su detención en la Comisaría y en el transcurso del camino hacia el Recinto Penitenciario el Sr. García Quintul habría recibido repetidas amenazas en las que se le habría indicado que él y su familia serían perseguidos y detenidos.

398. Según la información recibida, el 19 de septiembre 2010, el Sr. García Quintul habría sido presentado ante el Fiscal Militar de Puerto Varas ya que se habría invocado en

su contra la Ley de Justicia Militar. Seguidamente, dicho fiscal habría decidido dejar al Sr. García Quintul en libertad y habría dictado una orden para investigar los hechos de su actuación así como las circunstancias de su detención y el supuesto uso desmedido de la fuerza por parte de los Carabineros.

399. Se han recibido alegaciones de que estos actos habrían tenido lugar en el contexto de una supuesta campaña de seguimiento y vigilancia policial del Sr. García Quintul y sus compañeros activistas Mapuche durante los días precedentes, mientras éstos habrían estado desarrollando varias actividades con el fin de lograr la atención pública sobre la situación de los presos Mapuche a la vez que un grupo de los mismos mantenía una huelga de hambre, la cual habría cesado el día 9 de octubre de 2010.

400. Se expresó preocupación de que los actos descritos arriba pudieran estar relacionados con las actividades de promoción y protección de los derechos humanos por parte de los citados activistas Mapuches. Se expresa asimismo preocupación por la integridad física y psicológica del Sr. Cristian García Quintul y de su familia.

Respuesta del Gobierno

401. Mediante carta fechada el 8 de marzo de 2011, el Gobierno respondió a la carta de alegaciones con fecha de 15 de abril de 2010.

402. Al respecto, y como consideración preliminar, el Estado de Chile desea destacar que en su territorio continental, insular y antártico, está plenamente vigente el estado de derecho, siendo la Constitución Política de la República la que asegura a todas las personas que lo habitan el goce de los mismos derechos y garantías, sin distinción ni discriminación de ningún tipo.

403. Junto a lo anterior, es necesario señalar que, además de las normas jurídicas aplicables a todos los chilenos, rige para el pueblo Mapuche, así como para las nueve etnias indígenas legalmente reconocidas de nuestro país, un conjunto de normas especiales que, entre otras materias, establecen una institucionalidad y procedimientos específicos para abordar tanto temas de educación, salud, acceso al trabajo, entre otros y hasta requerimientos y reivindicaciones de tierras, lo que demuestra, sin lugar a dudas, una mayor y especial preocupación por nuestros pueblos originarios, todos quienes se benefician por tanto, de un protección jurídica reforzada.

404. Por su parte, la Constitución Política de la República establece como garantías fundamentales de los habitantes del país, la igualdad ante la ley y la igual protección de la ley en el ejercicio de los derechos - artículos 19 números 2 y 3 - En esta línea, dispone expresamente que en Chile "no hay persona ni grupo privilegiado". No corresponde al Estado, entonces, hacer discriminaciones bajo esta clase de circunstancias - salvo que así lo dispongan leyes especiales- ni, tampoco, el cumplimiento del deber legal y constitucional de sus órganos puede constituir de ninguna manera, una persecución racial o política en contra de una persona o un grupo de personas.

405. En el marco descrito, cabe desvirtuar las alegaciones relativas al Sr. García Quintul basándonos en la premisa de que, como es sabido, el Estado de Chile reconoce y ampara el derechos de reunión, así como la libertad de expresión de todos quienes deseen manifestarse siempre cuando se cumpla con institucionalidad vigente y mientras no afecte el derecho de terceros, tal y como lo establece nuestro ordenamiento jurídico interno, así como los tratados internacionales ratificados por nuestro país y que se encuentran vigentes.

406. Dicho cumplimiento de la institucionalidad se realiza mediante el procedimiento establecido - Ordenanzas de policía y otras normas complementarias-, el que debe ser verificado con anterioridad a la realización de la reunión/marcha y no de forma simultánea

o posterior a ella, en especial, cuando se trata de actividades que tendrán un impacto general en lugares o bienes nacionales de uso público como son avenidas, calles y plazas.

407. Según ha sido informado a los Sres. Relatores Especiales, el Sr. García Quintul y otros activistas Mapuches que lo acompañaban fueron víctimas de un supuesto uso excesivo de la fuerza por parte del personal policial que desarrollaba el procedimiento de detención, antecedentes consistentes en la opinión de ciertas personas, o tomados de entrevistas o declaraciones hechas por los propios supuestos afectados, todos, lo cual se comprenderá, representa necesariamente una visión de la realidad claramente parcializada y que no responde a hechos concretos y comprobados.

408. En ese contexto, cabe mencionar que las fuerzas de orden y seguridad de Chile actúan dentro del ámbito del ordenamiento jurídico interno, así como de las normas internacionales –en especial aquéllas relativas a derechos humanos- ratificadas y vigentes en Chile, por lo que la violencia en los procedimientos surge sólo como consecuencia de situaciones de resistencia violenta a las órdenes de la autoridad, sean judiciales o gubernamentales, siendo proporcional a dicha resistencia.

409. Hago presente a Uds. que Carabineros de Chile, como encargado del orden y la seguridad pública, antes de detener o aprehender a alguna persona o grupo de personas que pretenda realizar una manifestación no autorizada –marcha, reunión u otra-, siempre procede a una conversación previa con los participantes procurando disuadirlos de su accionar e instándolos a formalizar su intención de manifestarse, cumpliendo con los procedimientos establecidos, tal como ocurrió en el caso del Sr. García Quintul y otros activistas Mapuche.

410. El Estado de Chile no patrocina ni incentiva, bajo ningún aspecto, el uso de la violencia armada por parte de las fuerzas de orden y seguridad pública de nuestro país. La única posibilidad de que las anteriormente mencionadas fuerzas puedan actuar, según la naturaleza del procedimiento policial que corresponda, es por medio de una resolución judicial legalmente emitida por un tribunal de la República.

411. En la misma línea, el Estado de Chile no puede comprometerse a no utilizar la fuerza pública en los casos y en las circunstancias que así lo ameriten, ya que de ese modo estaría incumpliendo una de sus funciones principales: mantener el orden y la seguridad de todos los habitantes del país. Asimismo, en el cumplimiento de este deber no cabe hacer discriminaciones de ningún tipo para proceder o no, ya sea a favor o en contra, de cierto grupo de personas.

412. Importa hacer notar, asimismo, que el ordenamiento legal de Chile no contiene ninguna norma que tenga como objetivo sancionar la realización de protestas o actividades en que replanteen demandas sociales, ya sea por comunidades originarias o por cualquier agrupación civil siempre que se conformen a las reglas que impone la convivencia democrática, lo que demuestra, una vez más, que en Chile, la protesta social no es ni puede ser criminalizada.

413. En relación a las recomendaciones expresadas en la comunicación de los Sres. Relatores, quiero manifestar la decisión del Gobierno de realizar todos los esfuerzos necesarios para que las instancias correspondientes subsanen cualquier exceso que pudiera haberse cometido en el caso del Sr. García Quintul y se tomen las medidas necesarias para evitar amenazas o daños a la integridad física de los miembros del pueblo Mapuche que realicen manifestaciones públicas. Asimismo, es un compromiso del Ejecutivo, la sanción judicial y/o administrativa que corresponda a las personas responsables de cualquier uso excesivo, injustificado o desproporcionado de la fuerza en el curso de los procedimientos policiales de detención antes señalado.

414. En el caso consultado, cabe consignar que ha sido lenta la obtención de la información que interesa a los Sres. Relatores y difícil contar con información específica y detallada sobre el caso del Sr. García Quintul, en particular sobre sus exámenes médicos, investigaciones, cargos en su contra, entre otros, lo que nos impide dar una respuesta más completa, que nos comprometemos a brindar en el más breve plazo. Lo anterior, en todo caso, hay que entenderlo en el contexto de todos los esfuerzos desplegados por el Gobierno en agosto y septiembre del año pasado concentrados en resolver la grave huelga de hambre de 34 comuneros mapuches presos en cárceles del Sur que preocupaba a todo el país. Esta situación consumió muchas energías destinadas al tema indígena y fue, afortunadamente resuelta tras intensas gestiones que permitieron al Ejecutivo atender lo sustancial de los reclamos, incluyendo importantes reformas legales a la Ley Antiterrorista y a la de Justicia Militar. Asimismo, cabe hacer presente que la situación que habría afectado a Cristián García Quintul se habría verificado el día de la conmemoración del Bicentenario de nuestra Independencia nacional, donde la atención de las autoridades y de la población giraba en torno a la solemnidad de esas celebraciones, en cuyo mardo difícilmente podía prosperar y entenderse un acto de manifestación e interrupción de dichas actividades que congregaban con emoción a toda la comunidad nacional.

415. Así, con base en la información hasta ahora recabada, podemos informar a los Sres. Relatores que no consta registro alguno de que el Sr. García Quintul u otros activistas mapuches hayan presentado denuncia alguna sobre los supuestos malos tratos recibidos y/o vulneraciones en sus derechos y libertades. Frente a ello resulta sorprendente una denuncia ante mecanismo de protección internacionales toda vez que aún no se han agotado las instancias judiciales internas chilenas de enmienda y reparación del supuesto agravio producido, lo que nos hace dudar la veracidad de las denuncias realizadas por la supuesta víctima.

416. Al concluir esta repuesta, me permito reiterar a los Sres. Relatores que el Estado de Chile está comprometido a seguir trabajando en la resolución de los problemas que afectan al pueblo Mapuche y sus demandas, pues, existe verdadera conciencia de las particularidades de su cultura, tradición y formas de vida, que representan una innegable riqueza para todo nuestro país.

417. Como Gobierno, somos conscientes de dichos problemas y entendemos que algunos de estos desafíos para ser resueltos requerirán todavía mayores grados de esfuerzo dedicación y voluntad por todas las partes para arribar a una solución satisfactoria para todas las partes. Sin embargo estamos convencidos, y la inmensa mayoría del pueblo mapuche así también lo entiende, de que las vías de hecho no son camino para ningún resultado satisfactorio.

Observaciones

418. El Relator Especial agradece la información detalla proporcionada por el Gobierno de Chile en relación con la comunicación enviada. En conexión con dicha información, el Relator Especial se permite señalar que las denuncias y alegaciones presentadas ante los Procedimientos Especiales del Consejo de Derechos Humanos no requieren del agotamiento de instancias nacionales y/o regionales. En este sentido, se hace referencia al párrafo 42 del *Manual de Operaciones de los Procedimientos Especiales del Consejo de Derechos Humanos* el cual indica que “a diferencia de lo que ocurre con los procedimientos de comunicaciones establecidos por los tratados de derechos humanos, pueden enviarse comunicaciones al titular de un mandato incluso si no se han agotado los recursos internos del país de que se trate. Los procedimientos especiales no son mecanismos cuasi judiciales sino que se basan en la necesidad de actuar con rapidez, están concebidos para proteger a las víctimas, reales y posibles, y de ninguna manera impiden que se adopten las medidas judiciales apropiadas a nivel nacional.”

China (People's Republic of)

Allegation letter

419. On 8 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegations concerning **a series of distributed denial of service (DDoS) attacks against five websites**, Yahoo email accounts of journalists which have been hacked and blocked, or were otherwise rendered inaccessible, and the directive issued by the Internet Affairs Bureau of the State Council Information Office to restrict information regarding Google's decision to stop filtering search results and to direct all traffic from its servers in mainland People's Republic of China to the Hong Kong Special Administrative Region.

420. According to information received, between 23 and 24 January 2010, the websites of Chinese Human Rights Defenders (CHRD), Independent Chinese Pen, New Century News, Canyu and Civil Rights and Livelihood Watch were made inaccessible by a series of DDoS attacks. Such attacks consume the website server's resources so that the server cannot respond to instructions from computers of legitimate users, thus making it impossible to access the website. The frequency of the attack of CHRD's server was at two Gigabites per second at the height of the incident, which is reportedly the most intense attack the server has experienced, and requires a large number of computers to coordinate the attack.

421. On 25 March 2010, the CHRD website was once again rendered inaccessible by another series of DDoS attacks. The website remained inaccessible at the time of submission of this communication.

422. On the same day, the Yahoo e-mail accounts of approximately ten journalists who covered issues related to the People's Republic of China were hacked and blocked, or were otherwise rendered inaccessible. Google had previously reported in January that its servers had also been the target of a hacking attack which originated in the People's Republic of China, and which Google claimed was aimed at gaining access to Gmail accounts of Chinese human rights defenders. The Foreign Correspondents' Club in Beijing had also warned its members that the Google accounts of some of them had been compromised, as several journalists discovered that emails from their accounts were being forwarded to unfamiliar addresses.

423. These attacks on 25 March followed an announcement made by Google of its decision to stop censoring Internet search results on their Chinese-language search engine and to direct all traffic from its servers from the mainland People's Republic of China to the Hong Kong Special Administrative Region. Following this announcement, a notice had allegedly been issued by the Internet Affairs Bureau of the State Council Information Office, directing website managers to restrict coverage and discussions of Google's decision.

424. Concern was expressed that the DDoS attacks against several websites of human rights defenders were directly related to their work in defence of human rights. Similarly, concern was expressed that the attacks against Google and Yahoo e-mail accounts of journalists were related to their work in monitoring and reporting on sensitive issues in the People's Republic of China, and raise additional concerns regarding the confidentiality of journalistic sources.

Response from the Government

425. In a letter dated 12 April 2010, the Government responded to the communication sent on 8 April 2010. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position

to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Urgent appeal

426. On 16 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the state of health of **Mr. Hu Jia**, a Beijing-based HIV/AIDS activist, co-founder and former director of the Beijing Aizhixing Institute for Health Education.

427. Mr Hu Jia has been the subject of communications sent by several mandate holders following his detention on 27 December 2007 and his sentencing on 3 April 2008 to three years and six months' imprisonment and one year of deprivation of political rights for "inciting subversion of state power" and concerning the appeal process on 23 April 2008. The combined response of the Government to these communications was received on 4 June 2008.

428. According to the information received, Mr. Hu Jia was sentenced to 3.5 years in prison in April 2008. He previously suffered from cirrhosis of the liver, and was transferred on 30 March 2010 from Beijing City Prison to Beijing City Hospital to undergo tests. Mr. Hu Jia had remained in Beijing City Hospital since then and allegedly his state of health was rapidly deteriorating. It was believed that the poor nourishment and bad conditions in prison contributed to his ailing health. Although the results of the medical tests had not yet been shared with members of his family, it was feared that Mr. Hu Jia may be suffering from liver cancer. Ms. Zeng Jinyan, the wife of Mr. Hu Jia, had formally requested the relevant prison authorities to release him on medical grounds.

429. Concern was expressed that the living conditions and nourishment in prison might have not been adequate given the rapidly deteriorating health situation of Mr. Hu Jia. Further concern was expressed regarding the physical and psychological integrity of Mr. Hu Jia.

Response from the Government

430. In a letter dated 7 June 2010, the Government responded to the communication sent on 16 April 2010. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Allegation letter

431. On 22 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegations regarding the situation of **Mr. Gu Chuan**, writer and human rights activist. Mr. Gu Chuan was the editor of the website "Blog China" between 2005 and 2008 and has written several articles on the human rights situation in China in printed and online newspapers and magazines. Mr. Gu Chan is also a signatory of Charter 08, a public appeal calling for reforms to promote democracy and human rights in China.

432. According to the information received, on 9 April 2010, Mr. Gu Chuan was arrested in Beijing by three plainclothes policemen and taken away in an unmarked car. He was allegedly interrogated for seven hours.

433. The same day, police officers allegedly searched his apartment in the presence of his wife Li Xinai, without providing a warrant. They allegedly seized two notebook computers, a flash drive and removable hard drive, business cards, magazines, notebooks and the passports of Gu Chuan and Li Xinai. It is alleged that the police also took note of the couple bank details.

434. It is reported that Mr. Gu Chuan was released on the same day after having been warned not to talk about his arrest and interrogation. It is alleged that the arrest of Gu Chan was an act of intimidation aimed at preventing him from participating in a public forum on environmental protection co-organized by Chinese Human Rights Defenders, a network of Chinese and international activists dedicated to the promotion of human rights and strengthening of grassroots activism in China. The forum, who was supposed to be held in Beijing on 10 April 2010, was allegedly cancelled under police pressure.

435. Concern was expressed that the arrest and house search of Mr. Gu Chan might have been directly related to his work in defense of human rights.

Urgent appeal

436. On 30 April 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous people, sent an urgent appeal regarding **Mr. Cao Du**, a Mongolian from China. Mr. Du is the founder and Director of the Mongol Yurt Association, an organization promoting the rights of Mongolian people in China. He is also the webmaster of a Mongolian language internet "Mongol Yurt Forum", which discusses alleged human rights violations against Mongolian people committed by the Chinese authorities, and which has allegedly been closed by the Chinese authorities. Mr. Du has organized numerous workshops and seminars among Mongolians, mainly within the Inner Mongolia Autonomous Region, Liao Ning Province and other provinces of China where Mongolian people reside, to educate Mongolians on how to defend their rights through peaceful and legal means.

437. Mr. Du is a grantee of the UN Voluntary Fund for Indigenous Populations, a program run by the United Nations Office of the High Commissioner for Human Rights. The General Assembly established the United Nations Voluntary Fund for Indigenous Populations by resolution 40/131 of 13 December 1985. The original purpose of the Fund was to assist representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights by providing them with financial assistance.

438. The General Assembly expanded the mandate of the Fund in its resolution 56/140 of 19 December 2001 to also assist representatives of indigenous communities and organizations in attending, as observers, the sessions of the Permanent Forum on Indigenous Issues. In its resolution 63/161 of 18 December 2008, the General Assembly further adjusted the mandate of the Fund so as to facilitate the participation of representatives of indigenous peoples' organizations in the Expert Mechanism on the Rights of Indigenous Peoples established in accordance with Human Rights Council resolution 6/36 of 14 December 2007.

439. According to the information received, as a grantee of the UN Voluntary Fund for Indigenous Populations, Mr. Du was granted travel funds to attend the 9th session of the UN Permanent Forum on Indigenous Issues, taking place from 19 to 31 April 2010 at the United Nations headquarters in New York City.

440. On 18 April 2010, Mr. Du was allegedly arrested by the police at the Beijing Capital International Airport before boarding his flight to New York City to attend the 9th session of the UN Permanent Forum on Indigenous Issues. It is alleged that his whereabouts are unknown.

441. On 19 April 2010, the local police of Chao Yang City, Liao Ning Province, allegedly raided his house and confiscated Mr. Du's personal computers, his wife's laptop, their cell phones and other papers and documents.

442. Concern was expressed that the arrest of Mr. Du and the search of his house might be directly related to his work in defense of human rights and notably the non-violent exercise of his right to freedom of expression. Given the fact that the whereabouts of Mr. Du are unknown, further concern was expressed about his physical and psychological integrity.

Response from the Government

443. In a letter dated 5 July 2010, the Government responded to the communication sent on 30 April 2010. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Urgent appeal

444. On 8 July 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the situation of **Mr. Liu Xianbin**, a democracy and human rights activist. Mr. Liu Xianbin has published several articles online calling for democratic reforms in China. He is a signatory of Charter 08, a public appeal calling for reforms to promote democracy and human rights in China. The Special Rapporteur had previously addressed the Government in relation to the acts of harassment and arrests of several signatories of Charter 08.

445. According to the information received, on 28 June 2010, fourteen National Security officers from Suining City Public Security Bureau (PSB) reportedly searched the house of Mr. Liu Xianbin. They allegedly took him for questioning to the PSB station and confiscated two of his computer's hard drives, two removable drives, his bank card as well as records of payments he had received for publishing articles online. Mr. Liu Xianbin was reportedly released the same day.

446. On 5 July 2010, Mr. Liu Xianbin was allegedly arrested on suspicion of "inciting subversion of state power" and transferred to the Suining Detention Centre in Suining City, Sichuan Province. It was reported that the police questioned him in relation to his support to democracy activists and human rights defenders including Mr. Liu Xiaobo, a writer sentenced to 11 years of prison for "inciting subversion of State power" for his involvement in drafting and organizing the signing of Charter 08. Mr. Liu Xianbin was further questioned by the police about the online publication of his articles calling for democratic reforms.

447. On 6 July 2010, the wife and daughter of Mr. Liu Xianbin were allegedly questioned by PSB officers.

448. Concern was expressed that the house search, arrests and detention of Mr. Liu Xianbin might have been directly related to his work in defense of human rights and notably his calls for democratic reforms through articles, the signature of Charter 08 and the

support provided to other human rights activists. Further concern was expressed that this arrest may constitute a new attempt to intimidate signatories of Charter 08.

Response from the Government

449. In a letter dated 12 August 2010, the Government responded to the communication sent on 8 July 2010 as follows. Liu Xianbin, previously known as Liu Chen, has used the pen name Wan Xianming and is a 42-year-old male resident of Suining, Sichuan Province.

450. On 28 June 2010, Liu was placed in criminal detention by the Sichuan Province public security authorities on suspicion of inciting subversion of State power. The case is currently proceeding.

451. China is a State governed by the rule of law, and the departments involved have handled this case in accordance with the law. Liu, because he engaged in illegal activities, has been subject to an investigation as stipulated by law, and the appropriate measures have been taken; his every right has been upheld as well in accordance with the law.

Allegation letter

452. On 14 September 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal concerning the death of three people that occurred after Chinese security forces opened fire on Tibetan protesters in Palyul County Sharchu Gyashoed village, Sichuan Province.

453. According to information received, residents of Palyul County Sharchu Gyashoed village had expressed concern with local authorities to stop the expansion of gold mining activities in the area. About 100 Tibetans from the village camped outside the Government headquarters to wait for a response to their concerns.

454. On 18 August 2010, Chinese security forces are reported to have used a harmful gas to make the protestors unconscious. A number of the protestors engaged in scuffle with the security forces who were moving bodies of unconscious people into a truck. In response, the security forces opened fire killing three people and injuring several others.

Urgent appeal

455. On 22 September 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, an urgent appeal regarding the situation of **Mr. Tian Xi**, an activist who has reportedly been detained for his advocacy on issues related to HIV/AIDS.

456. According to the information received, Mr. Tian Xi, a 23-year-old college graduate from Henan Province, reportedly sustained a head injury in an accident as a child, which required a blood transfusion as treatment. The blood transfusion allegedly infected him with HIV, hepatitis B and hepatitis C. Since then, Mr. Tian Xi and his family have reportedly petitioned the hospital and local government for compensation, both for himself and for others infected with HIV. Allegedly, thousands of people in Henan and other provinces were infected with HIV through state-sponsored blood selling programs in the 1990s, and through resulting hospital transmissions of HIV from infected blood and blood products.

457. Henan provincial courts reportedly refused to accept any lawsuits relating to HIV, leaving victims with no legal recourse. It was reported that where no other recourse exists in China, citizens may bring complaints against local officials to higher-ranking government offices, but that only a small percentage of these complaints receive a favourable response. It was reported that Henan authorities had detained individuals trying

to draw attention to the issue of compensation for HIV transmission through contaminated blood and blood products.

458. It also has been reported that Mr. Tian Xi worked for several years at Aizhixing Health Education Institute, a non-governmental Chinese AIDS organization. In spring 2010, Mr. Wan Yanhai, the founder and director of Aizhixing, reportedly relocated his family to the United States, alleging government harassment.

459. On 23 July 2010 Mr. Tian Xi reportedly received a text message from the Xincai County Clerk, inviting him to return to Henan to negotiate a resolution to his HIV/AIDS issue. Mr. Tian Xi subsequently returned home to Henan and reportedly the Xincai County Clerk made several appointments to meet Mr. Tian Xi. However, on each occasion, when Mr. Tian Xi arrived for the appointment, he was unable to see the Clerk.

460. On 5 August 2010, Mr. Tian Xi reportedly visited the Xincai Number One People's Hospital to see the hospital director about obtaining HIV medication, as he did not bring a sufficient quantity with him to Henan. It is alleged that the hospital director told Mr. Tian Xi that he did not possess the authority to provide the required medication. It is reported that Mr. Tian Xi was upset by this response and allegedly broke some tea cups in the hospital director's office.

461. On 6 August 2010, the Xincai County Police allegedly took Mr. Tian Xi away, leaving the family with a 15-day detention order. It appears that he may have been briefly released, as it is reported that Mr. Tian Xi contacted Asia Catalyst on 10 August 2010, indicating that he was at risk of arrest. Documents from the Town Board of Lugu Township reportedly exist, which, inter alia, request the police to detain Mr. Tian Xi in connection with his HIV/AIDS advocacy; conclude that Mr. Tian Xi had been influenced by Mr. Wan Yanhai, the Chinese AIDS activist; and recommend that Mr. Tian Xi be "taken in to public security."

462. On 17 August 2010, it is alleged that the police took Mr. Tian Xi to the Xincai County Number Two People's Hospital for treatment, where he remained for two days. On 18 August 2010, the Xincai County Police allegedly issued an order for Mr. Tian Xi's detention on "suspicion of intentional destruction of property," apparently for the broken tea cups during his meeting with the hospital director of Xincai Number One People's Hospital. On 19 August 2010, the police reportedly took him away, and Mr. Tian Xi was transferred from administrative to criminal detention in the Shangcai County Detention Centre. On 21 August 2010, Mr. Tian Xi's mother and aunt reportedly went to the Shangcai County police station to see him, but were refused.

463. Concern was expressed that the detention of Mr. Tian Xi may have not been based on the "suspicion of intentional destruction of property," but instead be motivated by Mr. Tian Xi's ongoing petitioning to seek compensation and treatment for hospital transmissions of HIV from infected blood and blood products. Concern was also expressed that Mr. Tian Xi may have not been receiving appropriate and adequate medical treatment while being held in detention.

Response from the Government

464. In a letter dated 16 February 2011, the Government responded to the communication sent on 22 September 2010. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Urgent appeal

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

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

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

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

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

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

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

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

Response from the Government

473. In a letter dated 21 December 2010, the Government responded to the communication sent on 9 November 2010. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Urgent appeal

474. On 7 December 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding an alleged **crackdown on human rights defenders in China following the awarding of the 2010 Nobel Peace Prize to Mr. Liu Xiabo**.

475. According to the information received, several cases of alleged **arbitrary arrests and detentions** had been reported. On 8 October 2010, **Wang Lihong, Wu Gan, and Zhao Changqing** were arrested and detained for eight days after participating in celebrations following Liu Xiabo's Nobel Peace Prize.

476. On 8 October 2010, a dinner organized in honor of Liu Xiabo was disrupted by the police. **Liao Shuangyuan** and **Wu Yuqin**, members of the Guizhou Human Rights Forum (GHRF), who were attending this dinner, were arrested.

477. On 21 October 2010, **Liu Suli**, scholar, was taken away outside his home by a group of unknown men, and forced into a van. According to a witness, one of the men was a National Security officer. Liu Suli returned home the following day.

478. On 28 October 2010, activists **Hua Chunhui** and **Wang Yi** were arrested by police officers.

479. On 30 October 2010, **Li Hai** was arrested at the Shengshan Research Institute in Beijing by police officers. The day before, Li Hai had complained about the increased pressure put on activists following the awarding of the Nobel Peace Prize to Liu Xiabo.

480. On 2 November 2010, **Guo Xianliang**, an engineer from Yunnan Province, was arrested and detained on suspicion of "inciting subversion of state power" after he distributed flyers on Liu Xiabo's Nobel Peace Prize in Guangzhou. On 26 November, Guo Xianliang was released on bail. He is currently awaiting his trial at home.

481. **Xu Zhiyong, Wang Lihong, Liu Jingsheng, Wang Guoqi, Wu Gan, He Yang, Xiao Lu, Tiantian, Gao Jian, Peng Mo, Zhang Yongpan, and Zhao Fengsheng** were arrested by National Security officers after gathering in a public park in Beijing.

482. **Three students** from the People's University were arrested for unfurling a banner in support of Liu Xiaobo on Tiananmen Square.

483. **Tiantian** and **Liu Qiangben**, on their way to visit activist Wang Lihong who had been released after eight days in detention, were arrested by police officers and taken away.

484. **Shen Minqiang** has been detained following a series of speeches he made and interviews he gave with foreign media in front of Liu Xiabo's home.

485. Alleged **restrictions to freedom of movement** through the imposition of house arrests and bans on travelling abroad had been reported. On 8 October and 10 October 2010, police in Beijing increased the number of guards outside the home of **Zhang Zuhua**, *Charter 08* drafter and constitutional scholar. Zhang has been closely followed by police whenever he leaves his home.

486. On 9 October 2010, **Zhou Tuo** was put under house arrest in Beijing.

487. On 11 October 2010, **Pu Zhiqian**, a human rights lawyer, was put under house arrest in Beijing, preventing him from attending a gathering on that evening.

488. On 12 October 2010, police officers prevented **Fan Yafeng**, the main organizer of a weekly church meeting, from leaving his home to meet a journalist and attend a dinner. 20

police officers are reportedly guarding his home, and have been brutal with Fan Yafeng on some occasions. On 30 October 2010, Fan Yafeng was held by a police officer in a hotel from 9:00 a.m. to 6:00 p.m.

489. Since 18 October 2010, **Yu Jie**, a friend of Liu Xiabo, and his wife **Ning Xuan**, have been confined to their home in Beijing by National Security officers. On 27 October, Ning Xuan fell ill, and was in the first place prevented from going to the hospital. One National Security officer told Yu Jie and Ning Xuan that he had received “orders from above” not to let them leave their house under any condition. Finally acquaintances called an ambulance to their home. The National Security officers ultimately allowed Ning Xuan to go to the hospital, accompanied by police. Yu Jie was not allowed to accompany his wife.

490. On 29 October 2010, **Hou Wenbao** was arrested by police while visiting friends in Hefei City. Hou was forcibly returned to his hometown of Suzhou by National Security officers, and put under house arrest.

491. **Cui Weiping**, a university professor, and **Xu Youyu**, a retired social sciences researcher, who had both initiated a public petition calling on the release of Liu Xiabo, were recently barred by security guards and police officers from attending an art exhibition hosted by the Czech Embassy in Beijing. In 2009, Cui Weiping and Xu Youyu flew to Prague to accept a human rights award on behalf of Liu Xiabo.

492. According to reports, the following activists have been put under police surveillance or their freedom of movement is restricted: **Bao Tong, Liu Xia, Ding Zilin, Jiang Peikun, Jiang Qisheng, Hu Shigen, Gao Yu, Yu Meisun, Liu Suli, Liu Qiangben, Feng Zhenghu, Chen Tianshi, Yao Lifa, Chen Guangbiao, Gao Jian, Tiantian, Zhang Dajun, Zhang Jiannan, Liu Di, Liu Junning, Liu Ning, Li Xiongbing, Zhao Fengsheng, Wang Yi, Sun Wenguang, Qi Zhiyong, Wang Lihong, Li Zhiying, A Er, Wang Zhongxia, He Yang, Jiang Tianyong, Li Fangping, Xu Zhiyong, Zhao Changqing, Qang Guangze, Xia Yeliang, Zhang Hui, Wang Jinbo, and Mo Zhixu.**

493. On 2 December 2010, Ai Weiwei, an artist, was prevented from boarding a flight to the Republic of Korea where he was due to attend the 2010 Gwangju Art Biennale. After successfully passing through customs, Ai Weiwei was stopped by a police officer who produced a handwritten note by the Beijing Public Security Bureau, which stated that his presence outside China could endanger State security.

494. Other activists who have been prevented from going abroad include **Mao Yushi, Liu Xiaoyuan, Cui Weiping, Mo Shaoping, He Weifang, Li Subin, Jiang Tianyong, He Guanghu, Liao Yiwu, Hao Jian, Zhang Boshu, Guo Yushan, Fang Cao, Wang Jinglong, Duan Qixian, Yu Fangqiang, Ding Ding, son of Ding Dong and Geng Xiaoqun**, and reportedly **around 200 Chinese Christians** who had planned to participate in an evangelical conference in South Africa.

495. Reports on alleged **forcible returns** had also been received. On 15 October 2010, **Liu Shasha**, who had visited three police stations where supporters of Liu Xiabo were detained, was arrested by men believed to be National Security officers, and forcibly returned to Nanyang City, where her parents live. She was reportedly ill treated during the trip back to her hometown.

496. On 16 October 2010, **Wu Gan** was forcibly returned from Beijing to his hometown of Fuzhou City, after being detained for 8 days for celebrating Liu Xiabo’s award.

497. On 17 October 2010, **Zhao Changqing** was forcibly returned to his hometown of Shanyang County. He is currently staying in a local guesthouse.

498. On 27 October 2010, **Hua Ze**, a documentary film maker, was reportedly abducted in Beijing and taken to an unknown location on the outskirts of the city where she was held for three days. On 30 October, she was forcibly returned to her hometown in Jiangxi Province, where she is currently under house arrest.

499. Other activists forcibly returned to their hometowns include **Zhang Hui** and **Gao Jian** returned to Shanxi; **Mo Zhixu** returned to Sichuan; **Hou Wenbao** returned to Anhui; **Chen Tianshi** returned to Guangxi; and **Li Hai** whose whereabouts remain unknown.

500. According to the information received, alleged **acts of intimidation**, notably through summons for questioning, had also taken place. On 12 October 2010, **Huang Yaling**, Chengdu *Charter 08* signatory, laid flowers in the Norway pavilion at the Shanghai World Expo to celebrate Liu Xiabo's Nobel Peace Prize. Shortly afterwards, National Security officers questioned Huang Yaling for two hours.

501. On 16 and 17 October 2010, retired university professor **Sun Wenguang** and **Ni Wenhua**, **Li Hongwei**, **Qin Zhigang**, and **Xie Jinyu** were summoned for questioning by police officers in Jinan City, following their participation in festivities celebrating the Liu Xiabo's Nobel Peace Prize.

502. On 22 October 2010, a gathering of the **GHRF** in Guiyang City's Riverside Park was reportedly dispersed by Guiyang City National Security officers. **Chen Xi** was detained at the scene for a brief period. Several members of the GHRF, including **Mo Jiangang** and **Chen Defu**, **Shen Youlian**, **Xu Guoqing**, **Wang Zang**, **Wu Yuqin** and **Liao Shuangyuan**, were prevented from attending the gathering, by either being summoned for questioning, or being held under house arrest. The GHRF has repeatedly called on the Chinese authorities to release Liu Xiabo.

503. On 29 October 2010, **Wang Lihong** was questioned by police officers about an online article she had written on the alleged harassment she had suffered for three weeks following her celebration of Liu Xiabo's award, including her detention for eight days. Wang Lihong remains under police surveillance.

504. On 2 November 2010, **Ye Du**, Independent Chinese PEN member, was summoned for questioning by police in Guangzhou. He was questioned on the origin of flyers being distributed in the city, and was pointed out as being the initiator. Ye Du was released after four hours.

505. **Cha Jianguo**, **Gao Hongming**, and **Wang Guangze** were warned by police officers not to participate in activities to celebrate Liu Xiabo's award. Jiang Danwen, secretary of Independent Chinese PEN, was warned not to discuss the prize.

506. Similarly, **Yang Anliang**, **Wang Zhengwei**, **Li Chun** and **Zhang Wei** were summoned for questioning by National Security officers in Nanning City Guangxi Province because of their participation in similar activities.

507. Other activists who were summoned for questioning include **Wang Lihong**, **Zhao Changqing**, **Wu Gan**, **Xu Zhiyong**, **Liu Jingsheng**, **Wang Guoqi**, **He Yang**, **Zhang Yongpan**, **Yin Yusheng**, **Zhao Fengsheng**, **Bao Longjun**, **Liao Shuangyuan**, **Gao Jian**, **Wei Qiang**, **A Er**, **Xiao Lu**, **Tiantian**, **Sun Wenguang**, **Li Hongwei**, **Ni Wenhua**, **Qin Zhigang**, **Liu Guiqin**, **Jie Jinyu**, **Hou Zonglan**, **Gao Xiangming**, **Li Wanlong**, **Gong Lei**, **Chen Qingquan**, **Li Changyu**, **Li Shijun**, **Chen Xi**, **Huang Yanming**, **Du Heping**, **Shen Youlian**, **Xu Guoqing**, **Li Renke**, **Duan Qixian**, **Zhang Wei**, **Zan Aizong**, **Zhu Xinxin**, **Ye Du**, and **Chen Xiaochang**.

508. Other activists who were warned not to celebrate or spread the news that Liu Xiabo was awarded the Nobel Peace Prize include **Yang Hai**, **Zhang Jiankang**, **Wang Debang**,

Wen Kejian, Li Jianjun, Zhang Shanguang, Mei Chongpiao, Mo Jiangang, Tian Zuxiang, Yong Zhiming, and You Jingyou.

509. Alleged **blocking of means of communication** had also been reported. The internet access of Liu Xiabo's wife, **Liu Xia**, had reportedly been interrupted by the authorities, without any reason being given. Her cell phone service had also been blocked. The last message sent via Twitter was dated 18 October 2010. Since then, she had been out of reach.

510. According to reports, the managers of the four main Chinese domestic internet portals, i.e. Ten Cent, Sina, Sohu, and Net Ease, were ordered by the authorities to remove pages mentioning the 2010 Nobel Prizes. It is reported that, as of today, online discussions, as well as phone text messages, related to Liu Xiabo and the Nobel Peace Prize are still blocked.

511. Finally, the websites of Independent Chinese PEN, New Century News, Boxun, *Charter 08*, Canyu, and others, which reported on Liu Xiabo's award and the subsequent alleged crackdown on human rights defenders, were attacked by a virus, in a reportedly organized and highly sophisticated manner.

Urgent appeal

512. On 19 January 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the situation of Ms. **Ni Yulan**, a human rights lawyer, and her husband Mr. **Dong Jiqin**. Over the past 11 years, Ms Ni Yulan has been involved in defending human rights, in particular, housing rights including by assisting victims of forced evictions in Beijing.

513. Ms. Ni Yulan was the subjected of a previous United Nations Urgent Appeal dated 30 July 2008, signed by the Special Rapporteur, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the situation of human rights defenders.

514. According to the information received, on 15 April 2010, Ms. Ni Yulan was released from prison. According to the information received, she and her husband were forced to live in a park in Beijing as a result of the demolition of their home and the confiscation of their belongings in 2008, as well as efforts on the part of the police to prevent Ms. Yulan and Mr. Jiqin to rent any space. Reportedly, the authorities instructed potential landlords or hotel owners not to provide space. Ms. Ni Yulan and her husband lived in the park for about 60 days, from mid-April until mid-June.

515. On 16 June 2010, they were reportedly confined in a room at the Yu Xin Gong Hotel.

516. On the evening of 16 June 2010, Ms. Yulan was detained in a police station, and released when many citizens reportedly convened outside the police station shouting slogans and calling for her release. Some time later, she and her husband were reportedly taken to a room at the Yu Xin Gong Hotel. Ms. Yulan and her husband are at most times allowed to leave the hotel room and to receive guests there. However, Ms. Yulan is largely confined to a wheelchair, her legs having broken allegedly under police torture some years earlier (as described below).

517. On 10 December 2010, Ms. Yulan was visited by a number of friends at her hotel room in the Yu Xin Gong Hotel. Shortly after the departure of her friends, it is alleged that police ordered the management of the hotel to cut the power to Ms. Yulan's room. Later that evening at approximately 10:30 pm. after the police had left; power was reportedly restored to Ms. Yulan's hotel room.

518. A number of days later it has been reported that the police returned to the hotel and again ordered the hotel management to cut the power to Ms. Yulan's room. The phone and internet connection was also disconnected and the hotel management were reportedly instructed by police to stop serving breakfast to both Ms. Yulan and her husband.

519. It is alleged, that on 20 December 2010, police officers from the Xicheng District of Beijing again contacted the hotel management and demanded that they again cut the power to Ms. Yulan's room.

520. Between 20 December 2010 and 4 January 2011, Mr. Jiqin complained about their situation to the authorities. Reportedly, one member of the Xicheng district government told Mr. Jiqin in one occasion when he was complaining that the authorities were probably going to take the couple 'back to the Emergency Shelter [in the Huangchenggen Park in Dongcheng district of Beijing].'

521. On 4 or 5 January, the police reportedly ordered the hotel management to cut off the water supply and it has remained cut off since then.

522. According to the information received, on 5 January, a person identifying himself as Xicheng district police officer came to the hotel room and demanded entry in order to investigate whether the couple was using a small stove operated with solid tablets of alcohol based fuel in the room because, he alleged, this was in violation of 'regulations.' The police officer was reportedly unable to cite any relevant regulation about operating stoves in a room and the couple refused him entrance and locked themselves in by bolting the door. Ms. Yulan and Mr. Jiqin pointed out to the police officer that if electricity were to be restored there would be no need for them to use candles or a stove. The police officer reportedly kept banging on the door and only desisted some time after Ms. Yulan had sent out a tweet reporting on the matter appealing for help, and after he had spoken to his superiors over the phone. According to the information received, the couple has been frequently exposed to verbal harassment and is afraid of letting the police come into their room because of the specific threats to throw them out, and also due to their previous experience of police violence.

523. Since 20 December 2010 until today, Ms. Yulan and her husband have been without power in their room, and consequentially have been unable to use phone or access the internet, and have been forced to recharge the battery of their computer outside the room. Ms. Yulan and her husband are being kept under close police surveillance.

524. Ms. Ni Yulan is allegedly confined to a wheel chair and relies on crutches to walk as a result of the torture she suffered in the hands of the police in 2002 when she was arrested for having attempted to film a forced demolition. Ms. Yulan was subsequently prosecuted for "obstructing an officer in the exercise of public duty", reportedly denied access to legal representation and sentenced to one year in prison. Her licence to practice law was permanently revoked. In 2008 Ms. Yulan was again detained and severely beaten, the remains of her home were demolished and her belongings were reportedly looted by members of the demolition team. In the context of her detention, Ms. Yulan was allegedly sexually harassed, and later accused of having attacked a police officer. She was brought before the court and was sentenced to two years in prison.

525. Concern was expressed for the physical and psychological integrity of Ms. Yulan and her husband given the allegations of harassment received indicating that the police have ordered that the power and water be cut to Ms. Yulan's hotel room in an attempt to force both her and her husband out of the hotel.

Response from the Government

526. In a letter dated 22 March 2011, the Government replied to the communication sent on 19 January 2011. However, the reply had not yet been translated at the time of finalization of this report, and thus the Special Rapporteur is unfortunately not in a position to summarize in English the content of the reply. He hopes that he will be able to make his observations on the reply in his future report.

Urgent appeal

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

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

529. The following cases have in particular been brought to the mandate-holders’ attention. The summary below is divided into two parts. While the first part addresses individual cases according to the specific city where the alleged violations have taken place, the second part addresses in particular the cases of three lawyers named Mr. **Jiang Tianyong**, Mr. **Tang Titian** and Mr. **Teng Biao**, for whom there are also allegations of interference in the discharge of their professional duties. Mr. Jiang Tianyong has been the subject of two previous communications sent on 10 June 2009 and on 7 December 2010. Three previous communications were sent on 7 November 2008, 10 June 2009 and 27 April 2010 on the case of Mr. Tang Titian. The case of Mr. Teng Biao was addressed in three previous communications sent on 21 December 2006, 13 March 2008 and 7 December 2010. We acknowledge receipt of the responses by the Government dated 14 February 2007, 24 April 2008, 21 August 2009, 13 February 2009, 21 August 2009 and 5 July 2010, but are still awaiting a reply to the communication dated 7 December 2010.

Part I-

Bangbu, in Anhui Province

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

531. Moreover, information has been received indicating that other activists based in the same province may have been harassed and questioned by the authorities. On 26 February 2011, police officers allegedly interrogated husband and wife Mr. **Zhang Lin** and Ms.

Fang Cao. Reportedly, Mr. Zhang Lin was held in custody overnight and police officers searched the couple's home, confiscating three computers.

Beijing (and surroundings)

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

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

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

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

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

Chengdu, in Sichuan Province

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

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

Guiyang, in Guizhou Province

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

Guangzhou, in Guangdong Province

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

friends took him to a hospital for treatment. It is further alleged that Mr. Shihui's computer was stolen from his home.

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

Harbin, in Heilongjiang Province

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

Jieyang, in Guangdong Province

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

Mianyang, in Sichuan Province

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

Qianjiang, in Hubei Province

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

Shanghai

546. On 19 February 2011, at 4:20 p.m., the home of Mr. **Feng Zhenghu**, a human rights activist, was reportedly searched. It is further alleged that Mr. Zhenghu was summoned by the police for sharing information and photos on the Internet of the police at Wangfujing Street, and that his computer and printer were taken away. At 10:00 p.m., he was allegedly released.

Suining, in Sichuan Province

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

Suizhou

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

Taiyuan, Shanxi Province

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

Tianshui Gansu Province

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

Wuhan, in Hubei Province

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

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

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

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

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

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

Wuxi, in Jiangsu Province

557. It is alleged that on 21 February 2011, Mr. **Hua Chunhui**, a rights defense activist aged 47, was taken by the police, charged the following day with “inciting subversion of

state power” and detained at Duqiao police substation in Nanchang District. Mr. Hua Chunhui has been actively involved in civil society activities in recent years.

Yichang

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

Yingcheng

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

Part II-

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

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

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

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

564. The detention of Mr. Tang Jitian was widely covered by some websites such as Twitter and the Chinese microblog Weibo and by overseas human rights organisations. To date, his fate and whereabouts are unknown, as the police refuse to inform his family on the place where he is being detained.

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

566. On 19 February 2011, the police reportedly visited him at his home and returned later to take him away. It is further alleged that the police took two computers, a copier-fax

machine, printed materials, between 10 to 20 books on politics, between 20 to 30 documentaries and dozens of photos of Chen Guangcheng from Mr. Teng Biao's home, searched his office and questioned his staff. Reportedly, Mr. Teng Biao was kept in the Beijing Municipal Public Security Bureau and his family has allegedly received no official notification of his detention. It is unclear where he is currently being detained.

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

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

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

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

Urgent appeal

571. On 22 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning the residential surveillance of Mr. **Wu Wei**, also known as Ye Du, a webmaster and Network Coordinator of the Independent Chinese PEN Centre (ICPC).

572. According to the information received, on 22 February 2011, Mr. Wei was arrested by police authorities at his home in Haizhu, Guangdong Province, China. His home was searched and police allegedly confiscated computers, books and videos.

573. On 1 March 2011, Mr. Wei was placed under residential surveillance in Fanyu, Guangdong Province on the charges of "inciting subversion of state power". It is alleged that prior to his arrest, Mr. Wei was engaged in dissident writing and activism, and as a result was often subjected to alleged harassment. Namely, Mr. Wei, while participating at the Pen International Congress, which took place in September 2010 in Tokyo, Japan, referred to warnings he had previously received from the police.

574. Concerns were expressed at the allegation that Mr. Wei's residential surveillance is a direct consequence of the exercise of his right to freedom of opinion and expression as guaranteed inter alia by article 19 of the Universal Declaration of Human Rights (UDHR).

575. Concerns were also expressed at the increasing allegations of resort to "residential surveillance" as a form of pre-trial detention. According to article 57 of China's Code of Criminal Procedure, a suspect subjected to residential surveillance must be held either in

her/his home or a designated dwelling if she or he has no permanent residence. Mr. Wei's detention outside his permanent residence in Guangzhou would allegedly be in violation of article 57. Moreover, in its Deliberation 01, adopted on 23 March 1992, the Working Group on Arbitrary Detention held that "house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave. In all other situation, it will devolve on the Working Group to decide, on a case-by-case basis, whether the case in question constitutes a form of detention, and if so, whether it has an arbitrary character".

Urgent appeal

576. On 25 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the situation of Mr. **Jigme Gyatso**, currently detained at Qushui Prison on the outskirts of Lhasa.

577. Mr. Jigme Gyatso was sentenced to 15 years of imprisonment and five years of deprivation of political rights by the Lhasa Municipal Intermediate People's Court on 25 November 1996, on charges of "planning to found an illegal organization and to seek to divide the country and to damage its unity" for his activities in support of Tibetan independence, including setting up a group called the "Association of Tibetan Freedom Movement" and distributing pro-independence leaflets. Mr. Gyatso was the subject of Opinion N° 8/2000 adopted by the Working Group on Arbitrary Detention on 17 May 2000, and of an urgent appeal sent by the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture on 4 January 2007. The Special Rapporteur on torture also visited him on 27 November 2005, at Qushui Prison (E/CN.4/2006/6/Add.6, Appendix 2, para. 21). Mr. Gyatso was also the subject of a joint communication dated 16 March 2009, sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

578. On 9 March 2007, the Government replied to the communication dated 4 January 2007, explaining that Mr. Gyatso enjoyed the same rights and treatment as other criminals. The Government claimed that his conditions of detention have not changed, that he was at the time in excellent health, and that he received regular visits from family members. By letter dated 15 September 2009, the Government responded to the communication dated 16 March 2009.

579. According to new information received, Mr. Gyatso has been held in isolation from other prisoners and has been denied his right to family visits on three occasions in the last few months. He is reportedly in an extremely poor health condition.

580. In view of the allegation that Mr. Gyatso's health has been deteriorating in the course of last few months, concern was expressed for his physical and mental integrity. Concern was also expressed that Mr. Gyatso may not be receiving appropriate and adequate medical treatment while being held in detention.

Observations

581. The Special Rapporteur wishes to thank the Government for the responses provided to 7 of 13 communications sent during the reporting period, but regrets that at the time of finalization of this report, no translation was available for most of them. He also wishes to

express his regret that at the time of finalizing the report, the Government had not responded to four of his communications sent earlier on 7 December 2010, 14 September 2010, 22 April 2010, 22 January 2010, as well as to four communications sent in 2008, two in 2006, and five in 2005. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

582. The Special Rapporteur remains deeply concerned about recent reports of increasing crackdown on human rights defenders and bloggers as a result of peacefully exercising their right to freedom of opinion and expression, including enforced disappearance, house arrest, surveillance, imprisonment, and allegations of torture and other cruel, inhuman or degrading treatment or punishment. Most recently, in October 2010, the Special Rapporteur expressed his concern regarding the detention and sentencing of Mr. Liu Xiaobo for his peaceful advocacy for greater respect for human rights in China.⁵

583. Moreover, the Special Rapporteur is concerned that the situation has become even more precarious following the awarding of the 2010 Nobel Peace Prize to Mr. Liu Xiaobo, as noted in his joint communication of 7 December 2010, and since an anonymous call for a “Jasmine Revolution” in China was made online in February 2011.

584. The Special Rapporteur also expresses his concern that although the 1982 constitution guarantees freedom of the press, the Government of China continues to charge and imprison human rights defenders and bloggers on the basis of inciting subversion of state power (article 105, paragraph 2 of the Penal Code), which carries a sentence of up to five years of imprisonment. The Special Rapporteur reiterates his concern regarding the vagueness of the broad prohibition of “subversion of state power”, and underscores that any limitation imposed on the right to freedom of expression sought to be justified on the ground of national security is not legitimate unless the Government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence (see for example E/CN.4/1996/39). He would also like to reiterate that a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect Government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology or to suppress industrial unrest.

585. The Special Rapporteur recommends the Government to consider repealing the provision of subversion of state power from its Penal Code, and to fully guarantee the right to freedom of opinion and expression of all individuals, including opinions that are critical of the Government, or information that may be embarrassing to the powerful. The Special Rapporteur also emphasizes that peaceful advocacy for human rights should never be subjected to restrictions. As expressed in his press statement of 13 December 2010,⁶ he appeals to the Government to release all persons detained for peacefully exercising their fundamental rights, and to ratify the International Covenant on Civil and Political Rights.

⁵ “UN experts urge China to respect human rights and release all persons detained for peacefully exercising their rights,” media statement of 11 October 2010, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10428&LangID=E>.

⁶ “Deep concerns over crackdown on human rights defenders since Liu Xiaobo was awarded the Nobel Peace Prize”, media statement of 13 December 2010, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10599&LangID=E>.

Colombia

Carta de alegaciones

586. El 9 de abril de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron una carta de alegaciones señalando a la atención urgente del Gobierno la información recibida en relación con el Sr. **Johnny Hurtado**. El Sr. Hurtado era agricultor y Presidente del Comité de Derechos Humanos de la vereda La Catalina, basada en la municipalidad de La Macarena en el departamento de Meta. Vivía en Puerto Catalina en el departamento de Meta. Como un activista social, el Sr. Hurtado era nombrado un representante de la comunidad en varias ocasiones y había denunciado violaciones de los derechos humanos en la región del Río Guayabero, que supuestamente están vinculadas a la presencia militar en la zona. Se alega que estas violaciones incluyen las amenazas, intimidación y difamación públicas de los defensores de los derechos humanos, además de actos de acoso y acusaciones en contra de las residentes de la región.

587. En particular, a finales de diciembre de 2009 el Sr. Hurtado había públicamente denunciado violaciones de derechos humanos y la militarización de la región. Asimismo, recientemente él se había encontrado con una delegación de oficiales que visitó la región, y en que se incluyó parlamentarios, sindicalistas, y representantes de la organización Justicia por Colombia, una organización inglesa que está enfocada en los derechos humanos en Colombia, en particular los derechos laborales. La delegación hizo una visita oficial a la región para reunirse con trabajadores rurales, líderes comunales y defensores de los derechos humanos.

588. Según las informaciones recibidas, el lunes el 15 de marzo de 2010, el Sr. Hurtado habría sido asesinado. Se habría encontrado realizando trabajo agrícola en su granja, ubicada a un hora a pie del Puerto Catalina, cuando habría sufrido un impacto de bala de un arma de fuego. Se informó que sólo un tiro habría sido disparado. El Sr. Hurtado habría andado aproximadamente 30 metros antes de caer. Habiendo fallecido poco después. Se informó que agentes militares habían estado presentes alrededor de la granja en ese momento.

589. Se temió que el asesinato del Sr. Hurtado esté relacionado con las actividades que él realizaba para promover y defender los derechos de la gente de la región del Río Guayabero. Este asesinato, además de los actos de intimidación y amenazas, se enmarcan en un contexto de gran vulnerabilidad para los defensores de los derechos humanos en Colombia.

Respuesta del Gobierno

590. Mediante dos cartas fechadas el 4 de mayo de 2010 y el 9 de junio de 2010, el Gobierno respondió a la carta de alegaciones con fecha de 9 de abril de 2010. El Estado se permite informar a los Honorables Relatores que la exactitud de los hechos denunciados será determinada mediante sentencia judicial.

591. No obstante, es posible señalar que de conformidad con el informe de Policía Judicial elaborado en el marco de la investigación penal iniciada para el esclarecimiento de los hechos en que resultó muerto el señor Hurtado, estos tuvieron lugar el día 15 de marzo de 2010, en su finca ubicada en el poblado de “La Catalina”, municipio de la Macarena (Departamento del Meta).

592. El Estado se permite informar a Sus Señorías que la investigación penal con ocasión del presunto delito de homicidio del señor Hurtado fue iniciada de oficio, siendo asignada a

la Fiscalía 6° Especializada de la Dirección Seccional de Fiscalías de Villavicencio (departamento del Meta).

593. Como fue afirmado en el párrafo anterior, y de conformidad con la legislación penal vigente, la Fiscalía 6 ° Especializada inició de oficio la investigación penal con el fin de esclarecer estos lamentables hechos.

594. La mencionada investigación penal, que se encuentra en etapa de Indagación, fue asignada a la Fiscalía de conocimiento el día 24 de marzo de 2010, en desarrollo de la cual, se han practicado diversas diligencias tales como la inspección técnica al cadáver, diligencias de entrevistas a un testigo presencial de los hechos y la práctica de la necrodactilia.⁷

595. Sobre el particular, y de conformidad con lo manifestado por la Fiscalía de conocimiento, al momento de practicar la diligencia de inspección técnica al cadáver, la compañera permanente de la víctima, inicialmente aportó como documento de identificación del señor Hurtado, una cédula de ciudadanía a nombre de otra persona. Posteriormente, allegó un carnet a nombre de Johnny Hurtado Perdomo, que lo identificaba como activista y defensor de Derechos Humanos.

596. En atención a lo anterior, y con el fin de tener claridad sobre la identidad del occiso, la Fiscalía de conocimiento remitió el resultado de la necrodactilia a la Registraduría Nacional del Estado Civil, solicitando se adelanten las gestiones pertinentes para determinar la plena identidad del difunto.

597. Visto lo anterior, el Estado Colombiano se permite informar que teniendo en cuenta que la investigación penal para esclarecer estos lamentables hechos fue iniciada recientemente, sus presuntos responsables aún no han sido identificados y tampoco se han proferido sentencias condenatorias. En cuanto a los procesos disciplinarios, el Estado informará posteriormente sobre la existencia de los mismos.

598. El Estado lamenta los hechos que resultaron en la muerte del señor Hurtado, e informa que el Gobierno Nacional está presto a brindar la colaboración necesaria a las autoridades judiciales encargadas de esclarecer los hechos y de identificar e individualizar a los responsables.

599. La Fiscalía 6° Especializada de Villavicencio inició de oficio la investigación penal con el fin de esclarecer estos lamentables hechos, y que en la actualidad se encuentra en etapa de indagación.

600. La Fiscalía de conocimiento ha practicado diversas diligencias tales como la inspección técnica al cadáver, diligencias de entrevistas a un testigo presencial de los hechos y la practica de la necrodactilia.

601. En la actualidad no existe certeza sobre la identidad de la víctima, motivo por el cual se solicitó a la Registraduría Nacional del Estado Civil constatar la identidad del difunto.

602. El Estado colombiano informará oportunamente acerca de los avances y resultados obtenidos en el marco de la investigación penal. De igual forma, informará sobre la existencia de investigaciones disciplinarias iniciadas con fundamento en los hechos que resultaron en la muerte del señor Johnny Hurtado.

⁷ De acuerdo con el Gobierno de Colombia, la necrodactilia se entiende como la reseña decadactiliar posmortem, sujeta al estado físico de las falanges distales de los dedos de las manos, convirtiéndose esta en la labor mas importante durante la inspección el cadáver para identificación del mismo.

Carta de alegaciones

603. El 20 de abril de 2010, el Relator Especial, junto con la Relatora Especial sobre los defensores de los derechos humanos, y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias enviaron una carta de alegación señalando a la atención urgente del Gobierno la información recibida en relación con el Sr. **Clodomiro Castilla Ospina**. El Sr. Castilla Ospina era editor y redactor de una revista informativa local, “El Pulso del Tiempo”. Asimismo era periodista del “Bloque Informativo” de “la Voz de Montería”, una emisora de radio ubicado en el departamento de Córdoba. Desde el año 2006, el Sr. Castilla Ospina había investigado y denunciado públicamente vínculos presuntos entre agentes del Gobierno local, políticos, terratenientes y paramilitares ilegales, además de varios casos de corrupción en el Gobierno departamental. Asimismo, el Sr. Castilla Ospina había investigado la participación presunta de un hombre de negocios en un intento de asesinato de un abogado de la ciudad de Montería. Recientemente él había citado como testigo en una investigación de la Corte Supremo de Justicia sobre los vínculos ilegales anteriormente mencionados.

604. Según las informaciones recibidas, el 19 de marzo de 2010, el Sr. Castilla Ospina habría sido asesinado. Aproximadamente a las 8.40 horas de la noche, el Sr. Castilla Ospina habría sido encontrado afuera de su casa, leyendo un libro, cuando un hombre no identificado se habría acercado y le habría disparado por lo menos ocho veces. El hombre desconocido habría huido en una motocicleta que habría sido conducido por un segundo hombre no identificado. El Sr. Castilla Ospina se habría muerto a la escena un poco después. La policía habría empezado una investigación sobre el asesinato pero hasta la fecha el motivo por el asesinato ni algunos sospechosos habrían sido identificados públicamente.

605. Se informa que el Sr. Castilla Ospina habría sido recibiendo amenazas continuamente desde el año 2006 como resultado de su trabajo y investigaciones. Él habría recibido medidas de protección policial del Ministerio del Interior y de Justicia durante tres años desde 2006. Sin embargo, durante el año 2009 él habría renunciado sus medidas de protección debido a su falta de confianza en la fiabilidad del subcomandante de la policía departamental, encargada a su protección. Posteriormente, en noviembre de 2009, él habría solicitado la reanudación de protección debido al empeoramiento de las amenazas en su contra. La solicitud habría sido rechazada porque un informe de inteligencia indicaba que las amenazas no eran de intensidad suficiente. El 3 de marzo de 2010, el Comandante de la Policía de Córdoba habría informado al Sr. Castilla Ospina que el Comando de Atención Inmediata (CAI) habría rechazado su solicitud de medidas de protección.

606. El 20 de febrero de 2010, el Sr. Castilla Ospina habría denunciado formalmente amenazas en curso en su contra ante la Fiscalía Quinta Seccional, en particular citando el Sr. William Enrique Salleg Taboada, Director del periódico “El Meridiano de Córdoba”. El Sr. Castilla Ospina habría publicado varios artículos en que él habría acusado al Sr. Salleg Taboada, la Srsa. Martha Sáenz, Gobernadora del departamento de Córdoba, y el Sr. Pedro Guisay Chadid, un empresario local, de estar vínculos a paramilitares ilegales. El Sr. Castilla Ospina habría expresado preocupación que las amenazas podría ser relacionadas a llamadas amenazantes que habría recibido de personas no identificados en su celular. Asimismo, habría recibido un mensaje de texto que le habría advertido que si no retiraba las denuncias, le sería asesinado. El Sr. Castilla Ospina habría creado que el mensaje de texto habría sido enviado por el Sr. Guisay Chadid.

607. Un nuevo análisis de peligro habría sido recientemente comisionado por el Ministerio del Interior en relación con las amenazas en contra del Sr. Castilla Ospina, pero al momento de su asesinato este informe no estaba completado. El Sr. Castilla Ospina había sido programado a presentarse ante la Fiscalía Primera Especializada de Montería el 24 de marzo de 2010 en relación con su denuncia formal en contra del Sr. Salleg Taboada.

608. Se temió que el asesinato del Sr. Castilla Ospina esté relacionado con las actividades que él realizaba para promover y defender los derechos de la gente de la región de Córdoba. Este asesinato, además de los actos amenazantes, de ser confirmados, se enmarca en un contexto de gran vulnerabilidad para los periodistas y defensores de los derechos humanos en Colombia.

Respuesta del Gobierno

609. Mediante cartas fechadas el 17 junio de 2010 y el 27 de julio de 2010, el Gobierno respondió a la carta de alegaciones con fecha de 20 de abril de 2010. El Estado se permite informar que la exactitud de los hechos denunciados será determinada mediante sentencia judicial.

610. No obstante, a la luz de la información aportada por la Fiscalía General de la Nación, el Estado colombiano se permite señalar que los hechos narrados por los Honorables Relatores Especiales, guardan consonancia con las labores investigativas adelantadas hasta la fecha.

611. El Estado colombiano se permite señalar que la Fiscalía Novena, adscrita a la Unidad Nacional de Derechos Humanos de la Fiscalía General de la Nación adelanta la investigación penal la cual fue iniciada de de oficio.

612. Tal como fue afirmado en el párrafo anterior, el Estado colombiano estima importante recordar que la Fiscalía General de la Nación, en atención a su obligación de investigar los delitos de los que tenga conocimiento, dio inicio a la investigación penal la cual se encuentra en la actualidad, en etapa de Indagación Preliminar.

613. Es así como, en desarrollo de la misma, la Fiscalía de conocimiento ha ordenado la elaboración del correspondiente programa metodológico, así como también diversas órdenes a la Policía Judicial de la Dirección de Investigaciones Judiciales de la Policía Nacional (DIJIN) para recaudar elementos probatorios, los cuales se encuentran en proceso de verificación.

614. No obstante lo anterior, a pesar de las gestiones desplegadas por la Fiscalía de conocimiento, el Estado colombiano se permite informar a Sus Señorías que hasta la fecha no se ha logrado individualizar ni identificar a los presuntos autores intelectuales y materiales del hecho punible.

615. En este mismo sentido, el Estado colombiano estima importante informar a Sus Señorías que la Procuraduría General de la Nación informó que la Procuraduría Delegada para el Ministerio Público en Asuntos Penales constituyó la Agencia Especial N° 9125 dentro de la investigación penal mencionada en el párrafo cuarto del presente documento.

616. Al respecto, el Estado colombiano se permite informar a Sus Señorías que a la luz de los hechos relacionados con el homicidio del periodista Castilla Ospona, la Fiscalía General de la Nación solicitó a su Oficina de Protección de Víctimas y Testigos que analice la viabilidad de incorporar a la esposa e hijos de la víctima dentro del Programa de Protección a su cargo.

617. De igual forma, se solicitó a los Comandos de la Policía Nacional en las ciudades de Montería y Mosquera (departamento de Córdoba), implementar protección especial a favor de estas personas.

618. En cuanto a las medidas de protección implementadas para garantizar la integridad física y psicológica de los defensores de derechos humanos en la región, el Estado colombiano se permite informar que durante el año 2010, la Policía del departamento de Córdoba ha llevado a cabo Estudios Técnicos de Nivel de Riesgo a ocho (8) defensores de Derechos Humanos del mencionado departamento, tres (3) de los cuales arrojaron como

resultado “Extraordinario”, y cinco (5) arrojaron como resultado “Ordinario”. En este sentido, el Estado colombiano se permite indicar que se han implementado alianzas estratégicas de seguridad, como medida preventiva a favor de estos defensores de Defensores de Derechos Humanos, de forma tal que se mitiguen y controlen las situaciones de riesgo en que se pueden encontrar estas personas.

619. El Estado colombiano lamenta y rechaza los hechos que resultaron en la muerte del señor Clodomiro Castilla Opsina.

620. La Fiscalía Novena, adscrita a la Unidad Nacional de Derechos Humanos de la Fiscalía General de la Nación, adelanta la investigación penal la cual fue iniciada de oficio.

621. El Gobierno Nacional brindará la colaboración necesaria a la Fiscalía General de la Nación, con el propósito de identificar e individualizar a los responsables y llevarlos ante el Juez competente.

622. La Fiscalía General de la Nación solicitó a su Oficina de Protección de Víctimas u Testigos que analice la viabilidad de incorporar a la esposa e hijos de la víctima dentro del Programa de Protección a su cargo.

623. La Policía Nacional, a través del Comando de Policía del departamento de Córdoba, se encuentra brindando medidas especiales de protección a favor de los familiares del periodista Clodomiro Castilla Ospina.

Llamamiento urgente

624. El 10 de junio de 2010 el Relator Especial, junto con la Relatora Especial sobre la Relatora Especial sobre la situación de los defensores de los derechos humanos enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la integridad física y psicológica del sacerdote y defensor de los derechos humanos **Javier Giraldo**. El padre Javier Giraldo es miembro del Centro de Investigación y Educación Popular (CINEP), organización no gubernamental creada por la Compañía de Jesús en 1962, que trabaja por la transformación social, económica y política de Colombia con especial atención a los sectores más desfavorecidos.

625. Según las informaciones recibidas, desde el día 22 de abril de 2010, habrían aparecido en la ciudad de Bogotá varias pintadas amenazando de muerte al padre Giraldo. Las pintadas habrían incluido textos como “Javier Giraldo = muerte”.

626. Como parte de su labor como defensor de los derechos humanos, el padre Giraldo habría estado activamente involucrado en el esclarecimiento de la masacre de Trujillo, en el Valle de Cauca, en la cual habrían sido asesinadas más de 300 personas en 1990.

627. Asimismo, el padre Giraldo habría denunciado crímenes y asesinatos cometidos por el ejército colombiano, grupos paramilitares y guerrilla en la Comunidad de Paz de San José de Apartado desde julio de 1996. Su trabajo en relación con esta comunidad habría incluido la denuncia de la participación de un antiguo Comandante de las Fuerzas Armadas colombianas en la masacre de San José de Apartado ocurrida el 21 de febrero de 2005. En conexión con su trabajo en este caso, el padre Giraldo habría sido objeto de una comunicación enviada por el entonces Relator Especial sobre la independencia de magistrados y abogados, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, y la Relatora Especial sobre la situación de los defensores de los derechos humanos el 20 de marzo de 2009.

628. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en Colombia. Se expresó preocupación por la integridad física y psicológica del padre Javier Giraldo y por el hecho de que estas amenazas pudieran estar relacionadas con sus actividades de promoción

y protección de los derechos humanos, en particular de los más desfavorecidos, así como con sus denuncias de violaciones de derechos fundamentales.

Llamamiento urgente

629. El 22 de diciembre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con las amenazas contra integrantes de varias organizaciones de derechos humanos en el Valle del Cauca, entre ellas el **Movimiento de Víctimas de Crímenes de Estado (MOVICE)**, la **Fundación Comité de Solidaridad con los Presos Políticos – Seccional Valle del Cauca (FCSPP)**, la **Asociación para la Investigación y Acción Social (NOMADESC)**, la **Asociación ECATE** y el **Sindicato Nacional de Trabajadores y Empleados Universitarios de Colombia, Subdirectiva Cali (SINTRAUNICOL)**. Varias comunicaciones de los procedimientos especiales han sido enviadas en relación con estas organizaciones y sus integrantes, la más reciente por la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Presidente-Relator del Grupo de Trabajo sobre la Detención Arbitraria el 23 de noviembre de 2010. En este respecto, agradecemos la respuesta del Gobierno de su Excelencia de fecha 6 de diciembre 2010.

630. Según las informaciones recibidas, el 10 y 11 de diciembre del 2010, varias organizaciones ubicadas en las zonas del Valle del Cauca habrían llevado a cabo actividades en conmemoración del día internacional de los derechos humanos en los municipios de Cali y Zarzal. Estas actividades habrían tenido como objetivo la visibilización de la situación de derechos humanos de algunos sectores de la región, entre ellos lesbianas, gays, bisexuales y personas transgéneros (LGBT), sindicatos, residentes en asentamientos urbanos, defensores y defensoras de derechos humanos y estudiantes, y habrían culminado con la presentación del “Plan de Vida de Derechos Humanos para el Valle del Cauca”.

631. Sin embargo, se informa que inmediatamente después de la finalización de los dichos actos, varias de las mujeres integrantes que se encontraban presentes habrían recibido amenazas de muerte mediante mensajes de teléfono, supuestamente provenientes del grupo paramilitar conocido como “Águilas Negras”. Aproximadamente a las 18:00h, el primero de estos habría llegado al teléfono de la Sra. Martha Lucia Giraldo, promotora del Capítulo Valle del MOVICE, desde un número conocido por la Relatora Especial, y habría dicho textualmente: “Ustedes son los que no dejan que este país progrese apoyando a familias de gerilleros (sic) y a los que depimen (sic) con esas ideas estúpidas de libertad por lo tanto son declarados objetivos de muerte nuestros. nomadesc. comité de presos. ecate. movice. Banco de datos cabildos y líderes indígenas...muerte a ustedes y comensamos (sic) desde hoy águilas negras nueva generación”.

632. Posteriormente, aproximadamente a las 21:00h, otro mensaje proveniente del mismo número habría llegado al teléfono de la Sra. Cristina Castro, integrante del CSPP y de la Red de Hermandad y Solidaridad con Colombia, el cual habría amenazado de muerte a integrantes de MOVICE, ECATE, FSCPP y grupos LGBT, entre otros, acusándoles de ser guerrilleros. Además, se informa que las Sras. Berenice Celeyta, directora de la Asociación NOMADESC y Aída Quilcué, ex consejera mayor del Concejo Regional Indígena del Cauca y anterior vocera del proceso Minga de Resistencia Social y Comunitaria, habrían asimismo recibido un mensaje similar al anterior, junto con otro que habría amenazado de muerte a integrantes de las mismas organizaciones, entre otras, así como sus familiares, acusándoles asimismo de ser “benefactores de la guerrilla”.

633. Se expresó grave preocupación por la integridad física y psicológica de las Sras. Martha Lucia Giraldo, Cristina Castro, Berenice Celeyta y Ayda Quilcué, así como otros integrantes de MOVICE, FCSPP, Asociación ECATE, NOMADESC, SINTRAUNICOL y

de otras organizaciones de derechos humanos que trabajan en el Valle del Cauca. Asimismo, se expresó temor por las alegaciones de que las amenazas en contra de estas organizaciones pudieran estar relacionadas con sus actividades pacíficas y legítimas de promoción y protección de los derechos humanos. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en el Valle del Cauca, así como en Colombia generalmente en los últimos meses.

Observaciones

634. El Relator Especial agradece las respuestas detalladas que el Gobierno de Colombia ha proporcionado en relación con las comunicaciones enviadas. Sin embargo, el Relator Especial lamenta que, en el momento de la finalización del presente informe, no había recibido respuesta a 25 comunicaciones enviadas anteriormente. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato, es por ello que insta al gobierno colombiano a que le proporcione una respuesta tratando los asuntos mencionados.

635. El 12 de agosto de 2010, el Relator Especial, junto con la Relatora Especial de la Organización de Estados Americanos, publicaron un comunicado de prensa en el cual ellos manifestaron su profundo rechazo ante el atentado ocurrido en la madrugada del 12 de agosto frente a Radio Caracol, en Bogotá, y expresaron su solidaridad con las personas heridas y con el personal de la emisora. Los relatores enfatizaron que, para impedir la repetición de estos actos brutales, es determinante la actuación inmediata del Estado para identificar la causa del ataque, capturar, procesar y condenar de manera efectiva y proporcionada a los autores materiales e intelectuales del mismo.

Democratic Republic of the Congo

Lettre d'allégation

636. Le 7 juin 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, a envoyé une lettre d'allégation concernant le décès de **M. Floribert Chebeya Bahizire**, directeur exécutif de la Voix des Sans Voix (VSV) et membre de l'Assemblée générale de l'Organisation Mondiale contre la Torture (OMCT) et la **disparition de M. Fidele Bazana Edadi**, membre et chauffeur de la VSV.

637. Selon les informations reçues, le 1er juin 2010, M. Bahizire aurait reçu un appel téléphonique le sollicitant pour un rendez-vous avec le Général John Numbi Banza Tambo, inspecteur général de la police nationale congolaise, pour un motif qui devait lui être communiqué sur place. M. Bahizire se serait rendu aux bureaux de la police nationale le jour même en compagnie de M. Edadi.

638. N'ayant pu rencontrer l'inspecteur général, M. Bahizire aurait envoyé plusieurs messages texte à son épouse, l'informant qu'il se rendait à l'Université pédagogique national. Il est allégué qu'à partir de 21h le même jour, M. Bahizire et M. Edadi auraient été injoignables, ne répondant pas aux appels téléphoniques de leurs proches.

639. Le 2 juin 2010, le corps de M. Bahizire aurait été retrouvé par la police à bord de sa voiture aux environs de Kinshasa. M. Edadi serait toujours porté disparu.

640. De vives craintes ont été exprimées quant au fait que le décès de M. Bahizire soit lié à ses activités non violentes de promotion et de protection des droits de l'homme, et ce dans l'exercice de son droit à la liberté d'opinion et d'expression. De vives craintes ont été

exprimées quant à l'intégrité physique et mentale de M. Edadi et plus généralement des défenseurs des droits de l'homme travaillant en RDC.

Réponse du Gouvernement

641. Dans une lettre datée du 7 août 2010, le Gouvernement a indiqué que s'agissant des deux principales préoccupations exprimées par les trois Rapporteurs spéciaux, les faits dans la cause seront mieux relatés après le procès. Le dossier, inscrit dans l'office de l'Auditeur General des Forces Armées de la République Démocratique du Congo sous le numéro RMP 0311/TMK/2010, est en cours.

642. Néanmoins, les résultats d'autopsie sont disponibles et ont été remis au Procureur Général de la République en date du 8 juillet 2010. Les médecins légistes « ont trouvé sur le corps des indications de contrainte extrême limitée par chocs, compression et/ou enserrement au niveau des bras et des jambes. L'autopsie n'a pas démontré avec certitude la cause du décès. Toutefois, les observations sont fortement en faveur d'une cause primaire impliquant le cœur, car des anomalies préexistantes au niveau du muscle cardiaque ont été constatées.

643. Le Gouvernement tient aux différents principes internationaux rappelés dans la lettre d'allégation précitée et réaffirme sa détermination à les faire respecter.

644. Un procès impartial et équitable se tiendra dans les tout prochains jours à l'issue de la clôture des enquêtes qui ont par ailleurs bénéficié du concours des médecins légistes néerlandais (agréés par la famille du disparu), afin que les coupables soient sanctionnés conformément aux lois et règlements de la République.

Appel urgent

645. Le 18 juin 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de M. **Berry Francklin Lutshaka**, journaliste à Radio Okapi, une station parrainée par les Nations Unies.

646. Le 3 juin 2010, après avoir effectué une enquête de terrain, M. Lutshaka aurait rapporté sur les ondes de Radio Okapi que les travaux de construction des hôtels de la société Rakeen Congo sur les sites « Gare centrale », « Office des Routes » et « Lac » seraient suspendus en raison de problèmes liés à la gestion financière du projet. M. Lutshaka aurait ajouté que le prince saoudien, qui finance le projet, aurait exigé la démission de l'actuel comité de gestion pour malversations financières et souhaiterait le remplacer par un autre comité. Or, le comité actuel refuserait de démissionner.

647. Le 7 juin, M. Lutshaka se serait entretenu avec M. Duc Mwamba, directeur administratif de la société Rakeen, qui n'aurait pas apprécié l'intervention de M. Lutshaka. Ce dernier lui aurait offert un droit de réponse, mais M. Mwamba l'aurait menacé dans les termes suivants : « tu as très mal fait ton travail. Comment peux-tu aller chercher des informations auprès des personnes qui n'ont pas qualité de te dire quoi que ce soit ? Dans la vie, il faut éviter d'avoir des problèmes avec les personnes qui ont le pouvoir en main, surtout ceux qui ont l'argent... Imagine ce qui est arrivé à Chebeya... dis-nous qui t'as donné ces informations. Parce que si tu ne nous le dis pas, c'est comme si tu en savais plus sur la question et facilement, on peut te rechercher et te faire du mal, dis-moi carrément la personne qui t'as donné ces informations et moi je vais m'arranger pour te faire disculper. Dans la boîte, il y a un grand combat entre les grands patrons et toi comme tu viens de mettre à la disposition ces informations au grand public, c'est comme si tu étais pour un camp au détriment de l'autre... ».

648. Le 8 juin, Me Vincent, avocat de la société Rakeen, aurait appelé M. Lutshaka pour lui proposer une rencontre le 9 juin afin de discuter du droit de réponse. M. Lutshaka aurait demandé à un officier de la sécurité de la Mission des Nations Unies en République démocratique du Congo (MONUC) de l'accompagner au rendez-vous. Quand Me Vincent aurait appris que M. Lutshaka venait accompagné, il aurait menacé l'officier de sécurité qui alors conseilla à M. Lutshaka de ne pas se rendre au rendez-vous.

649. Dans la matinée du 9 juin, M. Lutshaka aurait été informé par un magistrat qu'une plainte avait été déposée contre lui.

650. Le 10 juin, l'inspecteur judiciaire principal au parquet général de la Gombe aurait appelé M. Lutshaka pour le convoquer au tribunal. Une convocation par écrit aurait été envoyée par la suite.

651. Le 14 juin, le même inspecteur aurait émis une seconde convocation.

652. De sérieuses craintes ont été exprimées quant au fait que les menaces proférées contre M. Lutshaka et les éventuelles poursuites engagées contre lui soient liées à l'exercice de son droit à la liberté d'opinion et d'expression. Des craintes ont également été exprimées quant au fait que ces menaces s'inscrivent dans un contexte d'extrême vulnérabilité des journalistes et défenseurs des droits de l'homme en République démocratique du Congo, comme en attestent l'assassinat le 2 juin 2010 de Floribert Chebeya Bahizire, directeur exécutif de la Voix des Sans Voix et membre de l'Assemblée générale de l'Organisation Mondiale contre la Torture et la disparition de M. Fidèle Bazana Edadi, membre et chauffeur de la VSV. Ce n'est pas la première fois que des journalistes de Radio Okapi font l'objet de menaces et deux d'entre eux, MM. Serge Maheshe et Didace Namujimbo, ont été tués en 2007 et 2008 respectivement.

Appel urgent

653. Le 20 août 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de M. **Michel Tshiyoyo**, journaliste cameraman à Radio Télévision Amazone (RTA) qui émet à Kananga et de sa famille.

654. Selon les informations reçues, depuis le 15 août 2010, M. Tshiyoyo ferait l'objet de menaces de mort après qu'il ait filmé une partie d'un affrontement entre le Gouverneur du Kasai-Occidental, M. Trésor Kapuku, ses gardes du corps et la population de Luandanda, au cours duquel un garde du corps aurait été tué et quatre personnes au sein de la population auraient été blessées. A l'origine de cet affrontement, le Gouverneur aurait voulu procéder à l'investiture d'un nouveau chef du Groupement de Bakua Mushilu à Luandanda, en évinçant l'actuel chef qui serait d'obédience politique différente. La population aurait protesté à ce limogeage et le Gouverneur aurait cherché à mater ces protestations en arrêtant le chef de groupement évincé. M. Tshiyoyo aurait été le seul journaliste présent lors des faits.

655. Dans la soirée du 15 août, un garde du corps, accompagné d'un cameraman du Gouverneur, se serait rendu au domicile de M. Tshiyoyo, exigeant qu'il lui livre les images qu'il avait prises le jour même. Devant son refus, ces derniers seraient repartis. Plus tard dans la soirée, trois policiers en civil et un autre en tenue policière seraient venus au domicile de M. Tshiyoyo afin de l'appréhender, mais celui-ci n'était pas présent. Plusieurs personnes se seraient rendues au domicile des parents du journaliste et seraient restées à l'attendre jusqu'au lendemain matin. Il est allégué que le Gouverneur se serait déplacé en personne au domicile de M. Tshiyoyo afin d'obtenir les images en sa possession et qu'une prime de 200 USD aurait été promise aux voisins de M. Tshiyoyo s'ils informaient du retour du journaliste.

656. Craignant grandement pour leur vie, M. Tshiyoyo, sa femme et leurs cinq enfants auraient fui et se cacheraient. Il est allégué que l'Agence nationale de renseignements serait activement à leur recherche.

657. Le 19 août 2010, M. Tshiyoyo aurait reçu sur son téléphone portable un SMS le menaçant dans les termes suivants : « Sache que l'assassinat est fréquent à Kinshasa ainsi qu'à Kananga. Tu n'es pas à l'abri puisque tu es à Kinshasa. Tu es averti au-moins. Où a été tué Floribert Chebeya ? ».

658. De sérieuses craintes ont été exprimées quant au fait que les menaces de mort dont font l'objet M. Tshiyoyo et sa famille soient liées à l'exercice de son droit à la liberté d'opinion et d'expression. Des craintes ont également été exprimées quant à l'intégrité physique et mentale de M. Tshiyoyo et de sa famille. Ces menaces s'inscrivent dans un contexte d'extrême vulnérabilité des journalistes et des défenseurs des droits de l'homme en République démocratique du Congo, comme en attestent l'assassinat le 2 juin 2010 de Floribert Chebeya Bahizire, directeur exécutif de la Voix des Sans Voix et membre de l'Assemblée générale de l'Organisation Mondiale contre la Torture et la disparition de M. Fidèle Bazana Edadi, membre et chauffeur de la VSV. Ce n'est pas la première fois que des journalistes de Radio Okapi font l'objet de menaces et deux d'entre eux, MM. Serge Maheshe et Didace Namujimbo, ont été tués en 2007 et 2008 respectivement.

Appel urgent

659. Le 27 août 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de M. **Sylvestre Bwira Kyahi**, président de la société civile de Masisi (nord Kivu).

660. Selon les informations reçues, le 24 août 2010, en début d'après-midi, M. Sylvestre Bwira Kyahi aurait été enlevé par deux hommes portant l'uniforme des Forces armées de la République démocratique du Congo (FARDC), sur la route de Ndosho sur l'axe Goma Sake. Ces deux hommes auraient fait entrer de force M. Bwira Kyahi à bord de leur véhicule de marque Jeep Prado, de couleur kaki et aux vitres fumées. Le véhicule serait ensuite parti en direction de Goma. La famille de M. Bwira Kyahi et les membres de la société civile de Masisi seraient depuis sans nouvelle de celui-ci et ils craindraient grandement pour sa sécurité.

661. Au cours des quatre derniers mois, M. Bwira Kyahi aurait fait l'objet de nombreuses menaces de mort de la part de personnes présumées être des officiers FARDC postés dans le territoire de Masisi. Le 30 juillet 2010, la société civile de Masisi, sous l'impulsion de son président, M. Bwira Kyahi, aurait adressé au Président de la République une lettre ouverte dans laquelle elle réclamait le départ des militaires et officiers issus des ex-groupes armés, dont le Congrès national pour la défense du peuple (CNDP), basés sur le territoire de Masisi. Cette lettre comportait les noms de plusieurs officiers supérieurs actifs dans le territoire qui auraient été mis en cause dans des cas de violations des droits de l'homme. Suite à la publication de cette lettre, la sécurité de la victime se serait davantage détériorée.

662. De graves craintes ont été exprimées quant au fait que les menaces de mort à l'encontre de M. Bwira Kyahi et son enlèvement soient liés à ses activités de défense des droits de l'homme, en l'occurrence ses activités de dénonciation de violations de droits de l'homme commises dans le territoire de Masisi par de présumés membres des FARDC et des éléments de groupes armés. Des craintes similaires ont été exprimées quant à l'intégrité physique et mentale de M. Bwira Kyahi et des membres de la société civile de Masisi.

663. Les menaces de mort à l'encontre de M. Bwira Kyahi et son enlèvement s'inscrivent dans un contexte d'extrême vulnérabilité des défenseurs des droits de l'homme et les journalistes en République démocratique du Congo, comme en attestent, entre autres, les

menaces de mort proférées ce mois contre le journaliste M. Michel Tshiyoyo et sa famille, ainsi que l'assassinat le 2 juin 2010 de M. Floribert Chebeya Bahizire, directeur exécutif de la Voix des Sans Voix (VSV) et membre de l'Assemblée générale de l'Organisation Mondiale contre la Torture et la disparition de M. Fidèle Bazana Edadi, membre et chauffeur de la VSV. Enfin, MM. Serge Maheshe et Didace Namujimbo, journalistes de Radio Okapi, ont été tués en 2007 et 2008 respectivement.

Appel urgent

664. Le 5 octobre 2010, le Rapporteur spécial, conjointement avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent sur la situation de Me **Nicole Bondo Mwaka**, avocate au barreau de Kinshasa/Gombe et membre de l'organisation de promotion et défense des droits de l'homme Toges Noires, du Mouvement Mondial pour la marche des Femmes et de la Commission Nationale de la réforme de la police, Me **André Mwila Kayembe**, président de Toges Noires et de Mme **Madeleine Mangambu**, amie de Me Nicole Bondo Mwaka.

665. Selon les informations reçues, le 29 septembre 2010, Me Nicole Bondo Mwaka et Mme Madeleine Mangambu auraient été arrêtées et conduites dans les locaux de la Direction Générale des Services spéciaux de la police (ex-Kin Mazière). Leur interpellation ferait suite à leur présence sur les lieux d'un incident à Kinshasa, au cours duquel le cortège présidentiel aurait essuyé un jet de pierre. M. Armand Mudiandambu Tungulu, l'auteur du jet de pierre, aurait violemment été passé à tabac par des policiers et Me Nicole Bondo Mwaka serait soupçonnée par la police d'avoir filmé la scène à l'aide de son téléphone portable. Mme Madeleine Mangambu était en compagnie de Me Nicole Bondo Mwaka au moment des faits.

666. Le 30 septembre 2010, Me André Mwila Kayembe, président de Toges Noires, se serait rendu en début d'après-midi au siège de la DGSS pour s'enquérir de la situation de Me Nicole Bondo Mwaka. Il y aurait été détenu jusqu'à 18h00.

667. Le 1er septembre 2010, Me Nicole Bondo Mwaka et Mme Madeleine Mangambu auraient été transférées dans les locaux de l'Agence nationale des renseignements pour le motif "d'atteinte à la sûreté de l'Etat". Elles y seraient toujours détenues à ce jour et n'auraient pas accès à leur avocat, ni à leur famille. Elles seraient également privées de nourriture.

668. Le 4 septembre 2010, Mme Madeleine Mangambu aurait été libérée.

669. De sérieuses craintes ont été exprimées quant au fait que l'arrestation et la détention de Me Nicole Bondo Mwaka et Me André Mwila Kayembe soient en relation avec leurs activités de défense des droits de l'homme. Des craintes similaires ont été exprimées quant au fait que l'arrestation et la détention de Mme Madeleine Mangambu soient liées aux activités susmentionnées de Me Nicole Bondo Mwaka. Enfin, de sérieuses craintes sont finalement exprimées quant à l'intégrité physique et mentale de Me Nicole Bondo Mwaka.

670. Ce nouvel incident s'inscrit dans un contexte d'extrême vulnérabilité des défenseurs des droits de l'homme et les journalistes en République démocratique du Congo, comme en attestent, entre autres, l'enlèvement de M. Bwira Kyahi en août 2010, précédé de menaces de mort ; les menaces de mort à l'encontre de M. Michel Tshiyoyo et sa famille ; et l'assassinat le 2 juin 2010 de M. Floribert Chebeya Bahizire, directeur exécutif de la Voix des Sans Voix (VSV) et membre de l'Assemblée générale de l'Organisation Mondiale contre la Torture et la disparition de M. Fidèle Bazana Edadi, membre et chauffeur de la VSV.

Lettre d'allégation

671. Le 15 novembre 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, a envoyé une lettre concernant **une « proposition de loi relative aux pratiques sexuelles contre nature » qui aurait été débattue récemment au sein de l'Assemblée nationale de la République démocratique du Congo.**

672. Les titulaires de mandat ont demandé au Gouvernement de bien vouloir transmettre la présente lettre au Président de l'Assemblée nationale de la République démocratique du Congo.

673. Selon les informations reçues, le 21 octobre 2010, la salle des Congrès de l'Assemblée nationale de la République démocratique du Congo aurait débattu d'une « proposition de loi relative aux pratiques sexuelles contre nature ». Selon cette proposition de loi, « l'homosexualité (...) [est] une menace à la famille (...), une déviation de la race humaine vers des relations contre nature (...) et [constitue] une dépravation des mœurs qualifiées d'abomination ».

674. La proposition de loi vise à réviser le code pénal congolais, tel que modifié et complété par la loi du 20 juillet 2006 sur les violences sexuelles. Les modifications portent spécifiquement sur le paragraphe 8 de la section III du titre VI de la dite loi du code pénal :

- selon l'article 174h1 de la proposition de loi, « [s]era puni de trois à cinq ans de servitude pénale et d'une amende de 500.000 francs congolais, quiconque aura eu des relations homosexuelles » ;
- selon l'article 174h2 de la proposition de loi, « [s]ont interdites... toute association promouvant ou défendant des rapports sexuels contre nature. Sera puni de six mois à un an de servitude pénale et d'une amende de 1.000.000 francs congolais constants, quiconque aura créée, financé, initié et implanter toute association toute structure promouvant les relations sexuelles contre nature » ; et
- selon l'article 174h3 de la proposition de loi, « [s]ont interdits... toute publication, affiches, pamphlets, film mettant en exergue, ou susceptibles de susciter ou encourager des pratiques sexuelles contre nature ».

675. La criminalisation de l'homosexualité aurait un effet préjudiciable sur les efforts de la République démocratique du Congo dans sa lutte contre le VIH/SIDA. Les politiques de la santé publique concernant l'épidémie du VIH/SIDA démontrent clairement que la décriminalisation de l'homosexualité, combinée avec des efforts visant à lutter contre la discrimination des homosexuels, lesbiennes, bisexuels et transsexuels, représentent une mesure substantielle pour restreindre la propagation du virus. De plus, si la proposition de loi est adoptée, celle-ci aurait pour effet d'entraver l'accès à information, aux soins et aux traitements des personnes homosexuelles, atteintes de VIH/SIDA en République démocratique du Congo, et par conséquent pourrait compromettre la réponse nationale dans la lutte contre le VIH/SIDA.

676. Cette proposition de loi aurait également un effet néfaste sur la situation des défenseurs des droits de l'homme qui œuvrent pour la promotion et la protection des droits des homosexuels, lesbiennes, bisexuels et transsexuels en République démocratique du Congo. En effet, cette proposition de loi mettrait ces défenseurs dans une situation de vulnérabilité accrue car ils seraient potentiellement la cible d'attaques et d'actes d'intimidation de la part des autorités et de la population.

Appel urgent

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

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

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

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

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

Appel urgent

682. Le 9 février 2011, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant la situation de Me **Jean Claude Katende** et Me **Georges Kapiamba**, respectivement Président et Vice-Président de l'organisation non-gouvernementale Association Africaine de Défense des Droits de l'homme (ASADHO).

683. M. Katende a fait l'objet de deux appels urgents envoyés par le Rapporteur spécial sur le droit à la liberté d'opinion et d'expression et l'ancienne Représentante spéciale du Secrétaire général sur la situation des défenseurs des droits de l'homme les 7 janvier 2005 et 9 mai 2006. Aucune réponse à ces deux communications n'a été reçue à ce jour.

684. M. Kapiemba a fait l'objet d'un appel urgent envoyé par le Rapporteur spécial sur le droit à la liberté d'opinion et d'expression et l'ancienne Représentante spéciale du Secrétaire général sur la situation des défenseurs des droits de l'homme le 15 avril 2008. Cet appel reste sans réponse à ce jour.

685. Selon les informations reçues, le 1er février 2011, Me Jean Claude Katende aurait reçu un SMS le menaçant dans les termes suivants : « Merci pour le communiqué de presse n° 02/ASADHO/2011. Mais n'oubliez pas non plus le droit fondamental de tuer votre ennemi avant qu'il ne vous tue ». Quelques heures plus tard, dans la nuit du 1er au 2 février, Me Katende aurait reçu un appel anonyme d'une nature similaire: "Si tu continues ta campagne d'intoxication contre nous, tes jours sont comptés. Vos partenaires internationaux ne vous sauveront pas la peau".

686. Dans la matinée du 2 février, Me Georges Kapiemba aurait reçu un avertissement par le biais d'un appel téléphonique passé depuis le Cap, Afrique du Sud : "Toi et Jean Claude Katende vous pourrez être attaqués dans quelques jours à cause de vos déclarations".

687. Ces menaces feraient suite à la conférence de presse tenue le 1^{er} février 2011 par l'ASADHO dans ses locaux au cours de laquelle l'organisation aurait dénoncé la révision constitutionnelle adoptée par le Parlement congolais et la position du Gouvernement à l'égard des opposants politiques présentée comme intolérante, dans le contexte des élections présidentielles qui se tiendront à la fin de l'année 2011.

688. Il est également rapporté que le Ministre de la communication, M. Lambert Mendé, aurait déclaré publiquement que l'ASADHO était une organisation opérant pour le compte de puissances étrangères dans le but de déstabiliser le pays.

Réponse du Gouvernement

689. Dans une lettre en date du 7 février 2011, le Gouvernement a indiqué que le Ministre de la Justice et Droits humains a demandé au Procureur général de la République de diligenter les enquêtes appropriées pour la protection de deux responsables de l'ASADHO et membres de l'Entité de liaison des droits de l'homme.

Observations

690. Le Rapporteur spécial regrette, au moment de la finalisation du présent rapport, l'absence de réponse à la quasi-totalité des 91 communications envoyées depuis 2004. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits.

691. Dans un communiqué en date du 9 juin 2010, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a salué la suspension annoncée du chef de la Police nationale congolaise, l'Inspecteur général John Numbi, et l'arrestation de plusieurs policiers dans le cadre de l'enquête sur l'assassinat du défenseur des droits de l'homme Floribert Chebeya Bahizire en République Démocratique du Congo (RDC) et la disparition de son chauffeur, Fidèle Bazana Edadi. Les experts ont exhorté les autorités congolaises à inviter des experts médico-légaux indépendants à participer à l'enquête et à assurer que toute poursuite engagée soit solidement appuyée par toutes preuves de nature médico-légale et autres disponibles. Dans le contexte d'attaques et

de menaces persistantes contre les défenseurs et journalistes, et de l'impunité qui prévaut dans la plupart de ces cas, les Rapporteurs spéciaux ont rappelé qu'il ne peut y avoir de démocratie sans défenseurs des droits de l'homme, ni journalistes.⁸

Djibouti

Appel urgent

692. Le 14 février 2011, le Rapporteur special, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et le Président-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent la situation de M. **Jean-Paul Noël Abdi** et M. **Farah Abadid Heldid**, respectivement président et membre de la Ligue djiboutienne des droits humains (LDDH).

693. M. Jean-Paul Noël Abdi a fait l'objet d'un appel urgent et d'une lettre d'allégation envoyés les 14 mars 2007 et 9 avril 2009, respectivement, par le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et l'ancienne Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme. Nous accusons réception de la réponse du Gouvernement de votre Excellence en date du 23 mars 2007 à l'appel urgent susmentionné. En revanche, aucune réponse à la lettre d'allégation précitée n'a été reçue à ce jour.

694. Selon les informations recues, MM. Farah Abadid Heldid et Jean-Paul Noël Abdi auraient été arrêtés par des gendarmes les 5 et 9 février 2011, respectivement.

695. Dans l'après-midi du 9 février 2011, ils auraient été déférés devant le parquet de Djibouti. Ils seraient accusés de « participation à un mouvement insurrectionnel » sur la base des articles 145 et 146.4 du Code pénal djiboutien et auraient été placés sous mandat de dépôt. Ils encourraient une peine de quinze ans de réclusion criminelle et une amende de 7.000.000 francs djiboutiens. Ils seraient actuellement détenus à la prison de Gabode.

696. Il est allégué que l'arrestation et la détention de MM. Jean-Paul Noël Abdi et Farah Abadid Heldid et les charges retenues contre eux seraient liées au fait qu'ils aient dénoncé la répression, présentée comme sévère, de récentes manifestations lycéennes et estudiantines par les forces de l'ordre, dénonciation qui aurait été perçue par les autorités comme un soutien apporté aux dites manifestations.

697. Des craintes ont été exprimées quant au fait que l'arrestation et la détention de MM. Jean-Paul Noël Abdi et Farah Abadid Heldid et les charges retenues contre eux soient liées à l'exercice de leur droit à la liberté d'opinion et d'expression.

Réponse du Gouvernement

698. Dans une lettre en date du 11 mai 2011, le Gouvernement a indiqué que Monsieur Farah Abadid Hildid et Jean-Paul Abdi Noël ont été interpellés par les éléments du service de recherche de la police judiciaire de la gendarmerie nationale en charge de l'enquête ouverte sur instruction du procureur de la République, à la suite de graves troubles perpétrés en marge d'une manifestation organisée par les étudiants de l'Université de Djibouti le 5 février 2011 dans la matinée.

⁸ RDC : Des experts des Nations Unies demandent le renforcement de l'enquête sur l'assassinat d'un proéminent défenseur des droits de l'homme congolais, 9 juin 2010 : <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=10133&LangID=F>

699. Des dégradations importantes sur des édifices publics et de nombreux actes de pillages ont été commis.

700. Plusieurs individus sont arrêtés sur les lieux de leurs forfaits, qui en possession de biens provenant des pillages, d'autres munis d'objets contendants et barres de fer à l'aide desquels des principales dégradations ont été commises.

701. Il ressort des premiers éléments de l'enquête que le nommé Farah Abadid Hildid a participé à cette manifestation et cinq personnes parmi la douzaine gardées à vue, n'étant par ailleurs ni étudiants du pôle universitaire ni même un riverain de l'endroit où cette manifestation se déroulait, ont reconnu s'être retrouvés parmi les étudiants avec et sur initiative de Farah Abadid Hildid.

702. Celui-ci les avaient réunis la veille et l'avant-veille, c'est-à-dire dans l'après-midi du 3 février 2011, dans un local sis au quartier 7 faisant office d'annexe d'un mouvement que celui-ci anime pour le compte de son ami et cousin, Daher Ahmed Farah et dans la soirée du lendemain vendredi 4 février au siège du même mouvement au lieu-dit Cheik Moussa.

703. Farah Abadid Hildid appelait les participants aux réunions clandestines au soulèvement qui devait, selon lui, débiter à l'occasion de la manifestation des étudiants.

704. Non content d'y avoir incité les éléments « casseurs pilleurs », Farah Abadid participait lui-même aux violences ayant emmaillé dans la matinée du 5 février les abords de l'Université de Djibouti et le centre-ville proche.

705. Farah Abadid Hildid est interpellé le 5 février dans la soirée.

706. Les auditions qui s'ensuivirent ont permis d'établir que Jean-Paul Abdi Noël avait lui aussi participé aux deux réunions précitées.

707. Des documents et des retranscriptions saisies dans le cadre de l'enquête attestent de la réalité, non seulement des contacts nombreux entre Jean-Paul Abdi Noël et les principaux animateurs de mouvements dissous, lesquels mouvements sont identifiés comme étant des instigateurs des troubles perpétrés, mais également de la participation de ce dernier aux réunions préparatoires des 3 et 4 février ainsi que l'assistance fournie à la réalisation des infractions en permettant notamment de dupliquer les tracts appelant la violence.

708. Le 9 février 2011 est interpellé a son tour Jean-Paul Abdi Noël.

709. Une information judiciaire est ouverte le même jour ; Farah Abadid, et six autres personnes sont prévenues d'avoir participé à un mouvement insurrectionnel en provoquant des rassemblements et manifestations ayant entraîné des violences collectives, dégradations de biens appartenant à autrui et dégradation d'édifices publics.

710. Il est ordonné par le magistrat instructeur, détention préventive à l'encontre des sept prévenus.

711. Le 21 février 2011, Jean-Paul Abdi Noël est remis en liberté pour des raisons de santé ; le contrôle judiciaire auquel ii était astreint est levé par le même magistrat le 22 mars 2011.

712. Le 28 mars dernier, par ordonnance motivée, le juge d'instruction a rejeté la demande de liberté de Farah Abadid Hildid et de ses codétenus.

713. En complément, nous souhaiterions apporter les informations et observations suivantes :

1) Djibouti réaffirme son soutien aux procédures spéciales et son souhait de coopérer avec les détenteurs de mandats dans l'accomplissement des fonctions qui leurs

sont confiées par le Conseil des droits de l'Homme en vertu de la procédure 60/251 de l'Assemblée Générale.

2) Djibouti reconnaît que les procédures spéciales jouent un rôle crucial dans la promotion et la protection des droits de l'homme, tout en soulignant l'importance majeure que celles-ci s'évertuent constamment à s'acquitter de leurs missions en faisant à tout instant preuve d'indépendance, de probité, d'impartialité, d'honnêteté et de bonne foi.

3) Tout en soulignant l'utilité d'une interaction régulière des procédures spéciales avec les défenseurs de droits de l'homme, elle soulève des interrogations sérieuses quant au caractère urgent de la situation lorsque l'examen de la réponse donnée par le Gouvernement fait clairement ressortir que toutes les mesures ont été prises afin que les droits fondamentaux des personnes concernées tels qu'ils sont définis et protégés par le droit national et international ont été respectés.

4) A cet égard, nous souhaiterions attirer votre attention sur le paragraphe 3 de l'article 19 du Pacte International aux Droits civils et politiques qui stipule : « l'exercice des libertés prévues au Par.2 du présent article comporte des devoirs spéciaux et des responsabilités spéciales. Il peut en conséquence être soumis certaines restrictions qui doivent toutefois être expressément fixées par la loi et qui sont nécessaires ». Et à l'alinéa b du même article qui spécifie ces limites « la sauvegarde de la sécurité nationale, de l'ordre public, de la santé et de la moralité publique, ainsi que l'article 20, par.2 « tout appel à la haine nationale, raciale ou religieuse qui constitue une incitation à la discrimination, à l'hostilité ou à la violence est interdite par la loi ». Dans le cas sous examen, les deux personnes suscitées se sont rendues coupables d'infractions pénales mises en évidence par enquête rapide et impartiale menées par l'Etat et la procédure d'instruction qui a été engagée. Le gouvernement est convaincu que les individus, groupes, institutions et organisations non-gouvernementales ont un rôle important à jouer et une responsabilité à assumer en ce qui concerne la sauvegarde de la démocratie, la promotion des droits de l'homme et des libertés fondamentales ainsi que la promotion et le progrès de sociétés, institutions et sociétés démocratiques mais comme le stipule l'article 17 de la déclaration des défenseurs des droits de l'homme « dans l'exercice des droits et libertés de chacun, agissant individuellement ou en association avec d'autres, n'est soumis qu'aux limitations fixées conformément aux obligations internationales existantes et établies par la loi exclusivement en vue d'assurer la reconnaissance et le respect des droits et libertés d'autrui et afin de satisfaire aux justes exigences de la morale, de l'ordre public et du bien-être général dans une société démocratique ».

5) Nous souhaitons enfin souligner le fait que l'exercice du droit à la liberté d'opinion et d'expression est pleinement garanti par la législation nationale, un droit dont la jouissance est essentielle pour la vitalité du processus démocratique.

6) Dans les communications alléguant les informations qui ont probablement servi de base à l'appel urgent, il est souvent fait référence à un effort systématique du gouvernement de « musellement des voix dissidentes en raison d'un contexte pré-électoral tendu ». Le Gouvernement récusé les accusations de harcèlement et de musellement. Des élections démocratiques, libres et transparentes, se sont tenues à Djibouti en présence d'observateurs internationaux invités par le Gouvernement afin d'appuyer le processus démocratique. Le candidat sortant et le candidat indépendant soutenu par une partie de l'opposition ont chacun été étayés, au cours d'une campagne électorale vigoureuse, les politiques sociales, économiques qu'ils comptent mettre en œuvre afin de répondre aux défis de développement du pays. Et c'est sur la base de l'examen souverain de ces propositions que l'électorat s'est prononcé. Nous joignons à la réponse du gouvernement la déclaration conjointe des observateurs internationaux publiée à l'issue d'un scrutin dont ils ont salué la régularité, la transparence, l'équité et le bon déroulement conformément aux dispositions pertinentes.

Observations

714. Le Rapporteur regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 9 avril 2009, 10 avril 2006, 10 mars 2006 et 28 février 2006. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits.

Ecuador

Carta de alegaciones

715. El 22 de julio de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron una carta de alegaciones señalando a la atención urgente del Gobierno la información recibida en relación con el asesinato del Sr. **Germán Antonio Ramírez Herrera**, médico forense de la prisión de Quevedo, en la provincia de Los Ríos, y experto independiente parte de la red nacional creada por la Fundación para la Rehabilitación Integral de Víctimas de Violencia (PRIVA) para la ejecución del proyecto "Prevención de la tortura a través de la documentación e implementación del Protocolo de Estambul". PRIVA es una organización no-gubernamental que trabaja para la prevención y erradicación de la tortura en Ecuador.

716. Según las informaciones recibidas, el 6 de julio de 2010, sobre las 12:30 horas, el Dr. Ramírez Herrera recibió dos disparos con arma de fuego después de haber dejado su oficina. Varios testigos habrían asegurado ver en el lugar de los hechos a tres individuos en un coche color gris y a un cuarto en una motocicleta.

717. Como parte de su trabajo en tanto que experto independiente de la red nacional creada por PRIVA, el Dr. Ramírez Herrera habría documentando casos de tortura y ejecuciones extrajudiciales en la prisión de Quevedo. Como consecuencia de este trabajo, el Dr. Ramírez Herrera habría recibido amenazas en el pasado.

718. El día del asesinato del Dr. Ramírez Herrera, PRIVA habría presentado los casos de la prisión de Quevedo al Relator Especial de las Naciones Unidas sobre ejecuciones extrajudiciales, sumarias y arbitrarias, Philip Alston, el cual se encontraba realizando una visita de investigación al país.

719. Según las informaciones recibidas, tras el asesinato del Dr. Ramírez Herrera habría motivos para temer por la integridad física y psicológica de sus familiares así como de los trabajadores de PRIVA y de otros miembros de la red nacional de expertos independientes.

720. Se temió que el asesinato del Dr. Ramírez Herrera esté relacionado con sus actividades en defensa de los derechos humanos, en concreto con su labor de documentación de casos de tortura y ejecuciones extra-judiciales. Se expresó preocupación por la posibilidad de que el asesinato del Dr. Ramírez Herrera tenga relación con su trabajo como integrante de la red nacional de expertos independientes creada por PRIVA. Finalmente, se expresó preocupación por la integridad física y psicológica de los familiares del Dr. Ramírez Herrera así como de los trabajadores de PRIVA y otros miembros de su red nacional de expertos independientes.

Respuesta del Gobierno

721. Mediante carta fechada 2 de Noviembre de 2010, el Gobierno respondió a la carta de alegaciones con fecha de 22 de julio de 2010. El Gobierno del Ecuador, que considera una prioridad el garantizar y velar por el pleno ejercicio y goce de los derechos humanos de

todos los habitantes del país, ha brindado una especial atención al caso sobre la muerte del doctor Ramírez. En primer lugar, se informó de las denuncias y requerimientos internacionales sobre el caso a todas las altas autoridades que representan a las instituciones involucradas en brindar la debida respuesta estatal a este asunto, como son el Ministerio Coordinador de Seguridad; el Ministerio de Justicia, Derechos Humanos y Cultos; el Ministerio del Interior; la Fiscalía General del Estado y la Corte Nacional de Justicia.

722. Debido a la importancia del caso, a principios de agosto 2010 se articuló una coordinación interinstitucional, convocada por el Ministerio de Justicia y con la participación del Ministerio de Coordinación de Seguridad; del Departamento de Derechos Humanos de la Dirección de Educación de la Policía Nacional; de la Defensoría del Pueblo; del Ministerio de Defensa y del Ministerio de Relaciones Exteriores.

723. El 16 de agosto 2010, la Corte Nacional de Justicia informó que, en julio del presente año, solicitó al Fiscal General del Estado investigar el caso, a fin de establecer a los responsables del hecho, y al Comandante General de Policía solicitó tomar las medidas necesarias para garantizar la seguridad y la integridad de la familia del Dr. Germán Antonio Ramírez Herrera, así como de todo el personal y de la red de expertos independientes de PRIVA. La Presidencia de la Corte se comprometió a vigilar el proceso investigativo a fin de garantizar su rapidez e imparcialidad, respetando la independencia judicial.

724. Por su parte, el 2 de agosto del año en curso, la Fiscalía General del Estado reportó que a través del Fiscal de lo Penal de Quevedo la indagación previa se encuentra en etapa de investigación, en la cual se han receptado las declaraciones tanto de los funcionarios y los internos del Centro de Rehabilitación Social de Quevedo, como de los agentes de policía y otras personas involucradas en la investigación. El Fiscal de Quevedo señala que ha solicitado al Programa de Víctimas y Testigos brindar protección a las hijas y la esposa del doctor Germán Ramírez.

725. Adicionalmente, la Fiscalía General del Estado al ser de su competencia responde a las preguntas específicas planteadas por los titulares de los Procedimientos Especiales:

726. El Fiscal de Quevedo ratificó que las denuncias sobre los hechos del asesinato de Germán Ramírez corresponden a la realidad.

727. El Fiscal de Quevedo indicó que en el expediente consta una denuncia presentada por la hija de la víctima, señorita Tannia Carola Ramírez Peñafiel.-

728. El Fiscal de Quevedo señaló que la investigación se encuentra en etapa de Indagación Previa, que al momento consta de diez cuerpos, y se han receptado las declaraciones de los funcionarios y los internos del Centro de Rehabilitación Social de Quevedo, como de los agentes de policía y otras personas involucradas en dicha investigación.

729. El Fiscal informó que ha solicitado al Juzgado Séptimo de Garantías Penales de Quevedo la detención de algunos sospechosos de ser los autores materiales del delito con fines investigativos, a efectos de establecer las responsabilidades de los detenidos.-

730. Sobre la inclusión de las dos hijas y la esposa del doctor Germán Ramírez en el Programa de Víctimas y Testigos, las autoridades ecuatorianas certifican que la familia de la víctima ha sido llevada a otra ciudad y se le está brindando alojamiento y alimentación.

731. Cabe aclarar que, en virtud de que el presente caso se encuentra apenas en la fase de investigación, no se han impuesto sanciones penales ni administrativas con relación al mismo.

732. Sobre las medidas adoptadas por el Estado para garantizar la protección del personal de PRIVA, la Fiscalía General del Estado informa que el Sistema Nacional de Protección y Asistencia a Víctimas y Testigos constituye un conjunto sistemático de acciones

interinstitucionales, encaminadas a dar asistencia y protección integral a las víctimas, testigos y otros participantes en el proceso penal que han sufrido de manera directa o indirecta las afectaciones de acciones criminales. Uno de los principios que rige el Sistema, el cual garantiza su imparcialidad, es la voluntariedad, principio que ha sido definido de acuerdo con el Art. 295 numeral 1 Código Orgánico de la Función Judicial, como: “La aceptación del ingreso y la decisión y retiro del Sistema será voluntaria”. En consecuencia, el Sistema inicia su actividad de protección previa denuncia y solicitud de las personas que necesitan dicha protección.

733. La Jefatura Nacional de Protección y Asistencia tomó contacto con el personal de la Fundación para la Rehabilitación de las Víctimas de la Violencia (PRIVA), a quienes se les informó del procedimiento a seguir para su ingreso y las medidas que el Sistema ejecuta en caso de ser acogidos. Hasta la presente fecha los miembros de PRIVA no han presentado denuncia alguna ni han formalizado un requerimiento de ingreso al Sistema de Protección a Víctimas y Testigos.

Observaciones

734. El Relator Especial agradece al Gobierno por la respuesta recibida. Sin embargo, lamenta que, en el momento de finalizar este informe, no se había recibido respuesta a 27 comunicaciones enviadas con anterioridad. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato es por ello que insta al Gobierno a que le proporcione una respuesta acerca de los casos mencionados.

735. El Relator Especial lamenta especialmente el asesinato Dr. Ramírez Herrera y toma nota de la información proporcionada sobre el Programa de Víctimas y Testigos así como de las medidas adoptadas para proteger a su familia.

736. El 7 de octubre de 2010, el Relator Especial publicó un comunicado de prensa en el cual exhortó al Gobierno ecuatoriano a garantizar el ejercicio del derecho a la libertad de expresión y libertad de prensa. El martes 30 de septiembre, una sección de las fuerzas policiales atacó de manera violenta al Presidente Rafael Correa, a quien se le impidió salir del hospital, violando sus derechos fundamentales. Reiteró la importancia de la libertad de prensa de conformidad con los principios de diversidad y pluralismo a fin de informar a la sociedad de manera objetiva, tomando en cuenta que, en este caso, una gran parte de las fuerzas policiales fueron movilizadas por sectores interesados, basados en supuesta desinformación relacionada con las nuevas propuestas de leyes relativas a condiciones laborales.

Egypt

Urgent appeal

737. On 14 June 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal to the Government concerning Mr. **Ibrahim Mohamed MOUJAHID**, an Egyptian citizen, 18 years old, studying art in second year at the institute of art of Kwaisna, and living with his parents, in the village of Hanoun-Centre, Zafta, Muhafadhat Al Gharbiya.

738. According to information received, on 8 March 2010, Mr. Ibrahim Mohamed MOUJAHID was arrested by security agents of the institute of art of Kwaisna, while he was posting a student statement on the walls expressing support to the Al Aqsa Mosque in the city of Jerusalem. These security agents had reportedly no legal authority to arrest Mr. MOUJAHID, but they took him to their offices, where he was attached and violently beaten.

739. Later that day, Mr. MOUJAHID was handed over to police agents at the El Kwaisna Police station where agents reportedly insulted him, threatened him and violently beaten him before presenting him to the Court of El Kwaisna. The Prosecutor found no violation of criminal law and ordered his immediate release on the same day.

740. According to reports received, instead of being freed, on 11 March 2010 Mr. MOUJAHID was transferred to the premises of the intelligence services (Al Mabahit) of Beshbeen El Koum where an administrative detention order was issued against him with the charges of “belonging to a prohibited religious organization.”

741. On 12 March 2010, Mr. MOUJAHID was reportedly taken back again to the El Kwaisna police station, and then transferred the day after to the prison of Damenhour, where he remains detained as of today.

742. According to the information received, since the Prosecutor ordered his immediate release on 8 March 2010, Mr. MOUJAHID has not been presented before a magistrate to have his detention extended according to the law, and he has not been subject to any additional legal proceedings.

743. Serious concern was therefore expressed with regard to the detention of Mr. Ibrahim Mohamed MOUJAHID.

Response from the Government

744. On 16 July 2010, the Government replied to the urgent appeal sent on 14 June 2010 as follows.

745. The background to the altercation that took place on 10 March 2010 between Ibrahim Muhammad Mujahid, a second year student at the Arts Institute in Quwaisna, Manufiyah province, and Abdul Hamid Abdul Aziz Abdul Hamid, a policeman posted as a security guard at the gate of the Institute, at Manufiyah University, is that Mr. Abdul Hamid refused to allow Mr. Mujahid to enter the Institute. He did so in accordance with instructions from the administrative offices of the Institute that Mr. Mujahid should be denied entry unless accompanied by his guardian, in view of his repeated transgressions.

746. Following the altercation, Mr. Mujahid attacked and beat Mr. Abdul Hamid, causing injuries and bruises to his shoulders and chest and tearing his uniform. Quwaisna police station issued police report No. 3993/2010 in connection with the incident and transmitted it to the Prosecutor’s Office, which decided to release Mr. Mujahid on condition that he register his place of residence with the police. The allegations made in the petition, however, indicate that the student was arrested for posting flyers expressing solidarity with Al-Aqsa Mosque (posting flyers or sticking bills in any Egyptian educational institution is subject to administrative rules).

747. Mr. Mujahid was arrested on 12 March 2010 under another set of circumstances, in view of his previous repeated violations on the university campus and of the suspicions of the security forces about his activities at the Institute. The arrest was made under a warrant issued by the Minister of the Interior in accordance with article 3 of Act No. 162 of 1958 and Presidential Decrees No. 2 and No. 4 of 1982.

748. Mr. Mujahid was released on 9 June 2010, when the detention period established under Egyptian law expired. His release coincided with the release by the Ministry of Interior of all detainees not suspected of involvement in terrorist offences or narcotics trafficking, pursuant to the amendments contained in the Act promulgated by the Egyptian People’s Assembly on 11 May 2010 renewing the state of emergency and limiting its applicability to the said offences.

Urgent appeal

749. On 23 December 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal to the Government regarding the situation of Mr. **Ayman Salem**, Lieutenant Colonel at the Egyptian Military Forces, born in 1969, married with three children, who lives with his family in Hay Al Alf Maskan, Cairo.

750. According to the information received, since 3 December 2010, Mr. Ayman Ahmed Salem Mohamed had reportedly been publishing several online political opinions criticising the current regime in Egypt. It is also reported that he had been posting messages and comments in various forums, criticising the current regime and calling for non-violent civil disobedience.

751. It is further reported that fearing persecution from the Egyptian Security Services, Mr. Salem went into hiding for a few days. Soon afterwards, on 9 December 2010, Mr. Salem, his wife and daughters were allegedly arrested by agents of the Egyptian Security Services. It is reported that the security agents did not present an arrest warrant, nor did they inform Mr. Salem and his family of the reasons for their arrest.

752. Mr. Salem's wife and children were immediately separated from him, following their arrest and were later released on 11 December 2010. Reportedly, Mr. Salem's fate and whereabouts remain unknown since then. Mr. Salem's family was unable to obtain information from either the Egyptian Military Intelligence or the Egyptian Military Forces who have reportedly denied Mr. Salem's detention and refused to provide any information about his whereabouts or fate. On 15 December 2010, Mr. Salem's family filed a complaint with the National Council for Human Rights (reportedly known as Egyptian National Human Rights Institution) and on 16 December, with the General Prosecutor in Cairo. It is reported that Mr. Salem's family did not receive any response to either of these complaints.

753. Mindful of the fact that the fate and whereabouts of Mr. Salem allegedly remain unknown, concern was expressed about Mr. Salem's physical and psychological integrity and that of his family. Further concern was expressed that both the arrest of Mr. Salem and his purported secret detention may be related to his recent activities of publishing political opinions on the Internet criticising the current regime in Egypt.

Urgent appeal

754. On 1 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the right to food, sent an urgent appeal to the Government regarding the **arrests, excessive use of force, killings, attacks against journalists, and disruptions in media coverage and access to the Internet in relation to the demonstrations which have been taking place across Egypt since 25 January 2011.**

755. According to the information received, since 25 January 2011, massive demonstrations have been taking place throughout the country calling for democratic reforms, challenging the limitations on their freedoms of expression, peaceful assembly and association, and the right to participate in decision-making processes. In addition, the demonstrations would seem to have been fueled by social and economic grievances related to a lack of access to job opportunities and to an adequate standard of living exacerbated by the increasing cost of food and other basic commodities.

756. In this context, excessive use of force by security officers against peaceful demonstrators has been reported, causing the death of many protestors, which according to some media reports may already have reached triple figures. There are also reports that some members of the security forces have been killed.

757. While there are many other similar cases, the following demonstrators have reportedly been killed between 25 and 29 January 2011:

1. Mutapha Ragab, aged 21
2. Sulaiman Saber, aged 35
3. Ghareeb Abdulall
4. Fayez Fahim
5. Mohamed Ahmed Yosph, aged 23
6. Mahmoud Ahmed Mahmoud, aged 26
7. Alae Abdelmehsen
8. Mustapha Abdellah
9. Mohamed Sha'ban Bashir, aged 30
10. Mutafa Jamal Wardani
11. Eraddi Mohamed 'eraddi
12. Ahmed Ali Mohamed
13. Achraf Nour Al DIn Mohamed, aged 40
14. Islam Metwali Mohamed
15. Sharif Al Sayed Redwan
16. Faraj Abdelfatah Awad
17. Mohamed Mahrous Anwar
18. Samir Abdellah, aged 55
19. Ali Ahmed Ali
20. Abdelmajeed Abdelalim Abdelmajeed, aged 41

758. It has been reported that the above-mentioned persons were registered in Suez hospital as victims of gunshot wounds. They were allegedly shot during demonstrations by security officials who were using live ammunitions to halt peaceful demonstrations. It has been further reported that many of the demonstrators killed arriving at Suez hospital on 26 January 2011, were not registered due to the intervention by security officials. As a consequence of the use of live ammunition, hundreds of others have reportedly been injured and many remain in a critical state.

759. Hundreds of peaceful demonstrators have also allegedly been arrested in an attempt to clamp down anti-government protests. It has been reported that some of those arrested have been taken to undisclosed locations, including those arrested at Suez hospital on 26 January. These allegations are deeply worrying particularly in relation to the fate and whereabouts of those who have been arrested. Grave concerns have been expressed about the physical and psychological integrity of these individuals.

760. Information has also been received about major disruptions in communication networks and the transmission of news, which have prevented journalists and the public at

large to seek, receive and impart information concerning the events. Specifically, on 26 January 2011, access to social networking sites such as Twitter, Facebook, and YouTube were reportedly blocked. On 28 January 2011, at around 12:34 a.m., the country's four primary Internet service providers (ISP) all stopped moving data in and out of the country. According to Internet traffic-monitoring software, Internet connection has been disabled with the exception of information transmitted via Noor Group, which allegedly hosts the Egyptian Stock Exchange. Similarly, mobile phone connections have been disrupted, as all mobile phone operators have reportedly been instructed to suspend services in selected areas. While it has been reported that mobile phone communications were partially restored on 29 January 2011, access to the Internet reportedly remains blocked, as at 1 February 2011.

761. On 30 January 2011, Mr. Anas el-Fekki, Minister of Information, ordered the relevant Government agencies to take immediate legal measures necessary to suspend the operations of Al-Jazeera, a Qatar-based satellite television channel, in Egypt. He also reportedly ordered the licenses of five live satellite transmission equipment and other means of communication provided to Al-Jazeera to be revoked, as well as the accreditation of its staff. As a result, Nilesat, a satellite transmission company owned by the Egyptian Radio and Television Union and other Government agencies, has stopped transmitting the signal of Al-Jazeera's live news channel, which has been broadcasting live footage of the demonstrations.

762. In addition, journalists have allegedly been targeted by security forces while covering the demonstrations, including the following incidents. On 28 January 2011, Mr. **Asadallah al-Sawi**, correspondent for the British Broadcasting Corporation, was hit in the back of the head and has been taken to a hospital where he is currently recovering. Mr. **Ahmad Mansour**, a veteran Al-Jazeera journalist, was reportedly detained for over an hour in front of the Journalists' Syndicate in Cairo. Several journalists working with Al-Jazeera have reportedly been prevented from entering Egypt through Cairo International Airport. Four French journalists, working for Le Figaro, Journal du Dimanche, Sipa Photo Agency, and Paris Match, have allegedly been detained while covering demonstrations in Cairo. On 28 January 2011, Mr. **Ben Wedemen**, senior international correspondent for the Cable News Network (CNN), and Ms. **Mary Rogers**, photojournalist working with Mr. Wedemen, were surrounded and attacked by plainclothes police who took their cameras.

763. In this context, concern was expressed that human rights organizations are not able to gather information on human rights violations that have been reported in relation to these demonstrations. Concern was also expressed at the potential escalation of violence as well as at the subsequent increase in the number of victims and arrests.

Urgent appeal

764. On 4 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal to the Government concerning the **worsening of the situation of human rights defenders and journalists in Egypt**, in relation to the demonstrations which have been taking place across the country since 25 January 2011.

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

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

767. Those arrested include:

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

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

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

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

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

772. Serious concern was expressed that the arrest and detention of the aforementioned persons, and other acts of harassment faced by human rights defenders and journalists, may be related to their legitimate human rights activities in the context of the ongoing demonstrations across the country. Further concern was expressed for the physical and psychological integrity of the human rights defenders detained, and more generally, for defenders and journalists currently working in Egypt.

Observations

773. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 1 April 2011 and to earlier communications sent on 14 February 2011, 1 February 2011, 23 December 2010, 20 February 2009, 21 August 2008, and 3 April 2008. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

774. As expressed in his press statement on World Press Freedom Day of 2011, the Special Rapporteur commends and stands in solidarity with courageous individuals, including journalists, bloggers, and activists, who have risen above fear to express their legitimate grievances and to demand reforms, democracy and transparency, using at great risk their freedom of expression and new information communication technologies.⁹

775. In the context of political reforms in Egypt, the Special Rapporteur encourages the right to freedom of opinion and expression and the right to peaceful assembly of all individuals to be fully guaranteed, and to ensure that there are effective investigations and prosecution of persons responsible for the killings of protesters as referred to in his communications.

Fiji

Allegation letter

776. On 15 July 2010, the Special Rapporteur sent a letter of allegations concerning the continued and increasing restrictions to the right to freedom of expression and freedom of the press in the Republic of Fiji Islands, in particular the **recent adoption of the Media Industry Development Decree 2001** (Decree No.29 of 2010, hereinafter “the decree”). The Special Rapporteur had addressed concerns regarding violations of the right to freedom of expression in the Republic of the Fiji Islands to the Government through 11 communications since 2007, and expressed regret that no reply has been received from the Government to any of these communications.

777. According to the new information received, on 28 June 2010, Attorney General Mr. Aiyaz Sayed-Khaiyun reportedly announced that the decree, drafted in April 2010, is now in effect. The Special Rapporteur raised several concerns with regard to the compatibility of this decree with the obligations of the Government under international human rights law, in particular article 19 of the Universal Declaration of Human Rights (UDHR).

778. First, the decree stipulates that the media cannot publish material which threatens public interest or order, is against the national interest, or creates communal discord (article 22). Any media organization that breaches this provision is punished by a fine of up to

⁹ “At this historic juncture, Governments must choose reform over repression,” media statement of 2 May 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10975&LangID=E>.

100,000 Fijian dollars (approximately 53,000 USD) and/or imprisonment of up to two years (article 24). The Special Rapporteur expressed concern that the decree does not define what kinds of material fall under these categories, in violation of the principle that any law that restricts the right to freedom of expression must be clear, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful. In addition, the Special Rapporteur noted the principle enunciated, *inter alia*, by the Human Rights Council in its Resolution 12/16, which called upon all States to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law.

779. Second, the decree establishes a new regulatory body, the Fiji Media Industry Development Authority (hereinafter “the Authority”), which will have wide powers of investigation over journalists and media outlets, including powers of search and seizure (article 27(2)), and to refer any complaint received to the Media Tribunal. The Media Tribunal is mandated to enforce the decree. As the members of the Authority are to be appointed by the Minister of Information, National Archives and National Library Services, and the Chairperson of the Media Tribunal is to be appointed by the President, the Special Rapporteur expressed concern that the decree may be used as an instrument to censor publications that are critical of the Government.

780. Third, article 38(1) of the decree restricts foreign ownership by stipulating that 90 percent of shareholders of any media organization must be citizens of the Republic of Fiji Islands permanently residing in the country, and companies are only given three months to comply. Such a requirement is likely to result in the closure of the Fiji Times, which has come under increasing pressure in the past few years, due to critical reporting of the military and the Government. In this regard, the Special Rapporteur drew the attention of the Government to the letter sent on 18 May 2008.

781. Fourth, according to article 26 of the decree, journalists will be forced to reveal their sources to the Authority, in contravention of the principle that journalists should not be forced to reveal confidential sources, as enunciated *inter alia* in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (as endorsed in E/CN.4/1996/39 of 1996).

782. The Special Rapporteur expressed his concern that the adoption of the decree, in a context where the right to freedom of expression has already been undermined by the Public Emergency Regulations of April 2009, will further exacerbate the situation of the right to freedom of expression in the Republic of Fiji Islands. The Special Rapporteur reminded the Government of its obligations under article 19 of the UDHR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. In addition, he reiterated the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Urgent appeal

783. On 3 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal to the Government regarding the **pattern of arrests, arbitrary detentions, torture and ill-treatment of politicians, trade unionists, and other Fijians** in an attempt to prevent plans for a peaceful demonstration scheduled to take place in Fiji's capital, Suva, on 4 March 2011.

784. According to the information received, on 27 January 2011, at about 7:00 p.m., Mr. **Benjamin Padarath**, a businessman and a former politician in Fiji, was arrested by four members of the Fiji military in civilian clothes who arrived in a Toyota Hilux four-wheel drive at Mr. Padarath's home and informed his wife that the Prime Minister wanted to see him. Mr. Padarath drove to the government buildings and then was taken in a car, escorted by four military officers, to the Queen Elizabeth Barracks (QEB) in Delainabua. It is reported that as soon as the vehicle moved the two men who were sitting in the backseat with Mr. Padarath started punching him in the face and slapping and hitting his upper thighs. Mr. Padarath was reportedly beaten with steel helmets and rifle butts. Upon arrival at the QEB, he was locked in a cell having all his clothes except his underwear taken off. Later that night, Mr. Padarath was reportedly removed from the cell, severely beaten and assaulted by military officers and dragged back to his cell. Major Ben Naliva was reported to have been identified as one of the officers involved in the assault. It is reported that Mr. Padarath sustained serious injuries: his mouth, nose and ears had been bleeding, his face was swollen, his body was bruised all over and he was unable to walk. Only when the doctor at the military hospital told the soldiers escorting Mr. Padarath that he might die in custody did they carry him to the bus stop near the QEB military hospital, where he was put on a bench and later collected by his wife. We have been told that Mr. Padarath had been suffering from severe pain, was scared and refused to go out from his home.

785. It is further reported that on 10 February 2011, at about 8:30 p.m., Mr. Padarath was again taken to the QEB barracks by military officers, where he was stripped of his clothes, blindfolded and beaten. It is reported that Mr. Padarath was sexually assaulted, had hot water poured over him and was burned with cigarette butts. Allegedly, a draft decree authorizing the ousting of the Prime Minister was said to have been found in his house. Reportedly, Mr. Padarath was given a statement to sign without being able to read it. He was then threatened to be killed and his family murdered had he reported this incident. Mr. Padarath was reported to have been taken to the Colonial War Memorial hospital when the interrogator at the Criminal Investigations Department (CID) headquarters in Toorak realized that he was bleeding from the burn scalds and sustained injuries. It is further reported that from 11 to 23 February 2011, everyday, including on weekends, Mr. Padarath was picked up by the military officers at 8:00 a.m. at the hospital, taken into police custody at the CID headquarters and interrogated the entire day before being returned to the hospital at 11:00 p.m. It is also reported that Mr. Padarath was released from the hospital upon his own request since the CID officers had reportedly told him that they would not spend too long questioning him, and if he did not cooperate with them, he would face longer imprisonment. On 23 February 2011, Mr. Padarath appeared before the Suva Magistrates Court and released on bail after the magistrate saw the extent of his injuries. He had reportedly been placed in a wheelchair and was covered in bandages. The court hearing has reportedly been rescheduled for 4 April 2011. We have been told that Mr. Padarath suffers from nightmares and has difficulties sleeping. He has not recovered from sustained injuries, is in a state of severe depression and fears repeated detention and torture.

786. According to the new information received, Mr. Padarath has allegedly been charged with concealing a document with the intent of obtaining a financial gain from another

person, causing loss to the Government of Fiji. It is also reported that the questioning upon his detention implied allegations of a political nature, including allegations of overthrowing the Prime Minister and the Attorney General.

787. It is also further reported that on 28 January 2011, Suva lawyer Ms. **Renee Lal** was detained by the military for a few hours during which she was reportedly physically assaulted by a military officer. Ms. Renee Lal was reported to have had suffered head injuries as a result of the assault during her detention.

788. Additionally, on 18 February 2011, Mr. **Felix Anthony**; Mr. **Maika Namudu**; Mr. **Anil Kumar**, the Vice President of Ba branch of General Workers Union; Mr. **Mohammad Khalil**, the President of Fiji Sugar; and Mr. **Anand Singh** were allegedly arbitrarily detained by Fijian military officers, taken to a private residence and subjected to severe beatings and other forms of torture and ill-treatment during interrogations before being released later the same day. It is reported that the detention of the above mentioned individuals was linked to publishing an article in the national newspaper Fiji Times on matters pertaining to the Fiji Sugar Corporation, Air Pacific and Fiji Sun, in which the State is reportedly a major stakeholder. It is further reported that workers at the Lautoka Sugar Mill have been told by the Commissioner Western Division Commander Joeli Cawaki that if they got involved with the trade unions, they will have to deal with the military.

789. Reportedly, on 10 February 2011, Mr. **Poseci Bune** and Mr. **Anand Kumar Singh**, Fiji Labour Party officials, were also detained at the military barracks in Suva. It is reported that Mr. Anand Kumar Singh was repeatedly moved between different buildings, physically assaulted and subjected to long interrogations. He was reportedly denied access to a lawyer or his family members.

790. It is further reported that on 25 February 2011, Mr. **Samisoni Speight Tikoinasau**, a Fijian politician, was detained from the Soqosoqo Duavata ni Lewenivanua (SDL) party office in Lautoka for his alleged involvement in organizing the protest planned for 4 March 2011, as well as for distributing DVDs about human rights violations in Fiji. While detained in an unknown location, he claimed to have been subjected to torture and ill-treatment. His fate and whereabouts were unknown until after three days when he was released and fled to Australia to receive urgent medical treatment from the injuries sustained while in detention.

791. Furthermore, on 26 February 2011, seven young men aged between 18 and 21, from the outskirts of Suva, who are said to have been discussing plans for a peaceful demonstration on 4 March 2011, to call on the head of the Government to step down, were reportedly detained, physically and sexually assaulted and ridiculed by around 20 soldiers at the QEB. It is also reported that human rights activists and the family members of these young men were beaten and threatened by soldiers in the army camp when they went to enquire about them. These young men did not want to be named for fear of reprisals from the authorities. They were threatened to be killed if they spoke to anyone about their treatment at the camp.

792. Serious concern was expressed about an imminent risk of more people being arrested and subjected to torture and other forms of ill-treatment by the military in relation to the planned demonstration of 4 March 2011. Further concern is expressed about the fears for the safety of the above mentioned individuals. Finally, a serious concern was expressed that no military officers have been officially investigated or charged in relation to these allegations.

Observations

793. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communications sent during the reporting

period. Further, he regrets that the Government has responded to only two out of 13 communications sent since 2007, including one reply which merely informed the Special Rapporteur that the communication has been transmitted to relevant authorities. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

794. In addition, the Special Rapporteur reiterates his concern regarding the continued and increasing restrictions to the right to freedom of expression in Fiji, particularly given the adoption of the Media Industry Decree (Decree No.29 of 2010), as outlined in his communication of 15 July 2010. He urges the Government to promote a climate of tolerance of diverse views, including those that are critical of public officials and the powerful, and to take measures to promote press freedom.

Guatemala

Llamamiento urgente

795. El 29 de junio de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención del Gobierno la información recibida en relación las amenazas de muerte recibidas por los Sres. **Alberto Díaz Zet** y **Cornelio Subuyuj Camey**, Presidente y Vicepresidente de la Coordinadora Comunitaria de Desarrollo (COCODE), el Sr. **Juan Marcelo Coztojaj Tubac**, miembro de COCODE, el Sr. **Lázaro Raxon Cotzajay**, Coordinador del Consejo Pastoral de la Iglesia, y el Sr. **Gregorio Cotzajay Tubac**, Alcalde auxiliar. Todas estas personas serían líderes comunitarios opuestos al proyecto de instalación de una planta de cementos por la empresa Cementos Progreso S.A en la comunidad de San Antonio Las Trojes I, perteneciente al municipio de San Juan de Sacatepéquez, Departamento de Guatemala.

796. Según las informaciones recibidas, el día 5 de junio de 2010, varios trabajadores de la empresa Cementos Progreso S.A. habrían agredido a un grupo de personas que se encontraban reunidas en la comunidad de San Antonio de las Trojes I, insultándolos y lanzando piedras contra las casas, antes de que se cortara el servicio de electricidad. Aprovechando el corte de luz, los trabajadores de la mencionada empresa cementera habrían llevado a cabo varios destrozos y se habrían producido disparos.

797. En este contexto, los trabajadores de la empresa Cementos Progreso S.A. habrían proferido amenazas de muerte contra los Sres. Alberto Díaz Zet, Cornelio Subuyuj Camey, Juan Marcelo Coztojaj Tubac, Lázaro Raxon Cotzajay y Gregorio Cotzajay Tubac. El Sr. Cornelio Subuyuj Camey habría sido apuntado con un arma de fuego mientras se le amenazaba con eliminarlo físicamente.

798. Según la información recibida, varios trabajadores de la empresa Cementos Progreso S.A. se habrían asimismo presentado en la casa del Sr. Gregorio Cotzajay Tubac y, al no encontrarlo, habrían amenazado a su familia y les habrían advertido que quemarían su casa.

799. En el contexto de estos sucesos, varias personas de la comunidad de San Antonio Las Trojes habrían resultaron heridas, algunas de gravedad.

800. Esta no sería la primera vez que se producen actos de intimidación y amenazas contra líderes de esta comunidad. Recientemente, el día 2 de junio de 2010, un autobús que viajaba hacia la comunidad con miembros de la misma involucrados en la reparación de una carretera de la zona habría sido detenido por trabajadores de la empresa Cementos Progreso S.A. Los trabajadores de la empresa habrían hecho descender del autobús a sus ocupantes, les habrían amenazado y agredido físicamente.

801. Asimismo, se recuerda que el 11 de febrero de 2010, el cuerpo del Sr. Germán Antonio Curup, fue encontrado en el municipio de Bárcenas. El cadáver habría sido degollado y se habría encontrado con indicios de tortura. El Sr. Curup habría sido secuestrado con un colega de trabajo no identificado. Germán Antonio Curup era hijo del Sr. Abelino Curup, un líder comunitario de la región de San Juan Sacatepéquez. Un llamamiento urgente ha sido enviado el 5 de marzo de 2010 sobre esa situación, por el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos. Hasta la fecha, no hemos recibido ninguna respuesta de parte del Gobierno de su Excelencia.

802. En este contexto, se temió que las amenazas de muerte contra los Sres. Alberto Diaz Zet, Cornelio Subuyuj Camey, Juan Marcelo Coztojay Tubac, Lázaro Raxon Cotzoyay y Gregorio Cotzajay Tubac estén relacionadas con las actividades que realizan en defensa de los derechos de su comunidad, en particular en contra del proyecto de instalación de una planta de cementos por la empresa Cementos Progreso S.A. Estas amenazas y agresiones, algunas de ellas muy graves, se enmarcarían en un clima de gran vulnerabilidad para los defensores de los derechos humanos en Guatemala.

Llamamiento urgente

803. El 13 de diciembre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención del Gobierno la información recibida en relación con la integridad física y mental del Sr. **Mateo Bernabé López Pérez**, Secretario General del Sindicato de Trabajadores de Salud de Malacatán, miembro del Sindicato Nacional de Trabajadores de la Salud de Guatemala (SNTSG) y también del Frente Nacional de Lucha (FNL). El Sr. López Pérez trabaja en la defensa del derecho de la población al acceso a servicios públicos de calidad y a costos accesibles en el municipio de Catarina, Departamento de San Marcos.

804. Según las informaciones recibidas, en la madrugada del día 28 de octubre de 2010, dos hombres en un ciclomotor habrían realizado varios disparos contra el Sr. López Pérez cuando éste se dirigía a tomar el transporte público en el municipio de Catarina, San Marcos, hacia la Ciudad Guatemala. Según la información recibida, el Sr. López Pérez iba a participar en la asamblea general ordinaria del SNTSG durante la cual se iban a tratar asuntos propios del sindicato, entre ellos, la situación del jefe del área de salud de San Marcos. El SNTSG habría solicitado la destitución del jefe del área de salud por su presunta conexión con casos de corrupción y despidos injustificados.

805. Como resultado del ataque, el Sr. López Pérez, habría sido recibido cinco impactos de bala que no habrían afectado ningún órgano vital. Según informes recibidos, tras los primeros disparos, los atacantes habrían dado la vuelta con la intención de rematar al Sr. López Pérez, pero habrían decidido darse a la fuga disuadidos por el hecho que los vecinos comenzaron a encender las luces de sus casas y a hacer ruido.

806. Según las mismas informaciones, el ataque habría sido denunciado ante la Policía Nacional Civil (PNC), la cual habría iniciado las primeras investigaciones y remitido el informe policial a la Fiscalía del Ministerio Público para que esta institución inicie la investigación penal. La PNC habría puesto a disposición del Sr. López Pérez y de su familia dos oficiales con el fin de garantizar su protección. Asimismo, la Unidad de Derechos Humanos de la División Especial de Investigación Criminal (DEIC) también habría realizado una investigación detallada.

807. Según informes recibidos, a principios del año 2010, el Sr. López Pérez habría denunciado varios casos de corrupción en los que habría estado presuntamente implicado el Director del hospital de Malacatán. Asimismo, su trabajo en defensa del acceso de la

población servicios públicos de calidad y a precios accesibles lo habría relacionado con el Frente de Resistencia de los Abusos de DEOCSA de Malacatán (FRENA). El FRENA estaría llevando a cabo actividades de oposición y resistencia a las operaciones de la “Distribuidora de Electricidad de Occidente SA” en la zona, la cual pertenece a la empresa transnacional española Unión Fenosa. En este contexto, el 20 de octubre de 2010, el Sr. López Pérez habría participado en la conmemoración del asesinato del Sr. Víctor Gálvez, miembro del FRENA.

808. Se expresó grave preocupación por la integridad física y psicológica del Sr. López Pérez y por las alegaciones de que el ataque contra su vida pudiera estar relacionado con sus actividades de promoción y protección de los derechos humanos, en particular en defensa del derecho de la población al acceso a servicios públicos de calidad y a costos accesibles. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en Guatemala.

Respuesta del Gobierno

809. Mediante carta fechada el 23 de diciembre de 2010, el Gobierno respondió al llamamiento urgente con fecha de 13 de diciembre de 2010.

810. De acuerdo con la información proporcionada por la Oficina Regional de la Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos, con sede en el departamento de San Marcos, la situación del señor Mateo López es la siguiente:

1. El 5 de noviembre de 2010, la Policía Nacional Civil recibió una llamada donde les indicaban que en la calzada la Democracia había sido herida una persona con arma de fuego, realizando un patrullaje sin localizar a ninguna persona; minutos después se presentó el señor Santiago Apollnarlo, padre del señor Mateo Bernabé López, quien narró lo sucedido a su hijo,

2. Se coordinó con la Policía Nacional Civil seguridad personal en el Sanatorio donde se encuentra internado el señor Mateo López, con el objeto de resguardar su vida e integridad física.

811. Este Comisión Presidencial informó que nadie había presentado una queja ni por parte de la supuesta víctima o en su nombre. Sin embargo, como los agentes de la policía Nacional Civil tuvieron conocimiento la noticia de un hecho punible perseguible por ley informarán al Ministerio Público para que inicie con las investigaciones del caso de conformidad con el Código Procesal Penal decreto 51-92, artículo 504.

812. El Estado de Guatemala informa que el caso se encuentra en fase de investigación por parte del Ministerio Público para esclarecer los hechos denunciados.

813. El Estado de Guatemala informa que el juzgado de Paz de la localidad trasladó el expediente a la Fiscalía Distrital del Ministerio Público con sede en Malacatán, departamento de San Marcos con el objeto de que se inicien las investigaciones respectivas para dar con los presuntos responsables del atentado en contra del señor López.

Observaciones

814. El Relator Especial agradece las respuestas transmitidas por parte del Gobierno de Guatemala. No obstante, el Relator Especial lamenta que, en el momento de finalización del presente informe, no había recibido respuestas a 26 comunicaciones. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato, es por ello que insta al gobierno de Guatemala a que le proporcione una respuesta tratando los asuntos mencionados.

Honduras

Carta de alegaciones

815. El 20 de abril de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron una carta de alegaciones en relación con el **Sr. José Bayardo Mairena Ramírez, el Sr. Manuel Juárez, el Sr. Nahun Palacios Arteaga, el Sr. David Meza y el Sr. Joseph Hernandez**. El Sr. Mairena Ramírez y el Sr. Juárez eran periodistas en el programa “Así es Olancho”, que transmite en Canal 4, una televisora de Televisión R.Z., y asimismo trabajaban con Radio Excélsior, una emisora hondureña. El Sr. Mairena Ramírez también era director del Radio Excélsior, integrante de la Asociación de la Prensa Hondureña, y estudiante del periodismo al Centro Universitario Regional Nor-Oriental en Juticalpa. El Sr. Palacios Arteaga era director de noticias de la televisora Canal 5 del Aguán.

816. Según las informaciones recibidas, el 26 de marzo de 2010, el **Sr. Mairena Ramírez y el Sr. Juárez** habrían sido asesinados. Los dos periodistas habrían estado viajando en un coche por una carretera proveniente de la ciudad de Catacamas. Cerca de la ciudad de Juticalpa en el departamento de Olancho, aproximadamente a las 9.30 horas de la mañana, otro vehículo les habría acercado mientras su coche estaba en movimiento y hombres no identificados habrían disparado el Sr. Mairena Ramírez y el Sr. Juárez con varias ráfagas de tiros de ametralladora. Después, los agresores se habrían detenido y se habrían bajado de su vehículo para disparar más tiros y asegurar que los dos periodistas estaban muertos. Se informó que el coche del Sr. Mairena Ramírez tenía 21 agujeros de bala después del ataque. El Sr. Mairena Ramírez habría resultado muerto en la escena. El Sr. Juárez habría sido trasladado al Hospital San Francisco en Juticalpa pero habría muerto un poco después. Se informó que el Sr. Mairena Ramírez recientemente habría estado investigando los conflictos territoriales y el crimen organizado en Honduras.

817. Durante la noche del 14 de marzo, el **Sr. Palacios Arteaga** habría sido asesinado mientras viajaba en coche hasta su casa, ubicada en el barrio de Los Pinos, en la ciudad de Tocoa, departamento de Colón. Personas no identificados le habrían disparado con fusiles automáticos AK-47, y el Sr. Palacio Arteaga habría sufrido por los menos de 30 impactos de bala. Se informó que el coche en que viajaba habría recibido 42 impactos de bala, y que dos personas que estaban con él en el coche resultaban heridas.

818. El Sr. Palacios Arteaga habría sufrido varios actos de acoso durante meses recientes debido a su crítica pública al golpe de Estado de 2009, y su cobertura de las manifestaciones organizadas por la resistencia al mismo. El 30 de junio de 2009, equipos de trabajo del Canal 5 habrían sido confiscados durante un allanamiento militar en que agentes militares habrían allanado su casa, decomisado su coche, y amenazado a sus hijos con armas de fuego. El 24 de julio, la Comisión Interamericana de Derechos Humanos ordenó la implementación de medidas cautelares de protección para el Sr. Palacios Arteaga a fin de asegurar su vida e integridad física. Sin embargo, estas medidas nunca habría sido implementadas por las autoridades hondureñas.

819. Durante las últimas semanas, el Sr. Palacios Arteaga habría investigado el conflicto agrario que está tomando lugar en la región de Aguán entre el Movimiento Campesino Unificado (MUCA) y empresarios. Asimismo, recientemente habría informado sobre un operativo militar en el que 18 personas habrían sido detenidas y varias armas de fuego habrían sido decomisadas. Con posterioridad a ello, el mismo habría recibido nuevas amenazas de muerte.

820. Estos asesinatos habrían ocurrido en el marco de una situación de gran vulnerabilidad de los periodistas en Honduras. Se informa que por lo menos cinco

periodistas ya habrían sido asesinados en Honduras en los primeros tres meses de 2010. Por ejemplo, el 1 de marzo, el Sr. Joseph Hernández Ocho habría sido asesinado en la ciudad de Tegucigalpa, la señora Karol Cabrera habría resultado herida a consecuencia de un atentado contra su persona. El 11 de marzo de 2010, el **Sr. David Meza Montesinos**, periodista de "Radio El Patio" habría sido asesinado en horas de la tarde en La Ceiba, a unos 300 metros de su domicilio.

821. Hasta la fecha ninguna información habría sido hecha disponible en relación con las investigaciones de estas asesinatos ni sobre las medidas cautelares solicitadas a fin de proteger a otros periodistas y defensores de Derechos Humanos en riesgo.

822. Se expresó temor porque los asesinatos del Sr. José Bayardo Mairena Ramírez, el Sr. Manuel Juárez y el Sr. Nahun Palacios Arteaga pudieran estar relacionados con las actividades que ellos realizaban en defensa de los Derechos Humanos en Honduras, en particular desde el golpe de Estado de 2009. En vista de las informaciones aquí resumidas, se expresó profunda preocupación por la integridad física y psicológica de los periodistas y los defensores de los Derechos Humanos en Honduras. Aunque la Comisión Interamericana de Derechos Humanos ha ordenado varias medidas cautelares para asegurar la seguridad de periodistas en peligro, amenazas y ataques en contra de sus vidas e integridad siguen produciéndose.

Llamamiento urgente

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

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

825. A la fecha, no había recibido respuesta a la mencionada comunicación. Por ello, los Relatores Especiales quisieron reiterar su preocupación respecto a nueva información recibida. Según la misma, el pasado 5 de mayo, el pleno de la Corte Suprema de Justicia habría conocido de los expedientes de remoción de cinco funcionarios que fueron -entre otros- objeto de nuestro llamamiento urgente de fecha 16 de noviembre de 2009, es decir: **Luis Alfonso Chavez de la Roca**, Juez contra la violencia doméstica en San Pedro Sula; **Ramón Enrique Barrios**, Juez de Sentencia en San Pedro Sula; **Guillermo López Lone**, Juez de Sentencia de San Pedro Sula; **Osman Fajardo Morel**, Defensor Público de San Pedro Sula; y **Tirza Flores Lanza**, Magistrada de la Corte de Apelaciones Penal de San Pedro Sula. De acuerdo a la información recibida, la Corte Suprema habría acordado durante dicha sesión la remoción de estos funcionarios. Esta decisión habría sido ratificada en el Pleno de la Corte Suprema el 13 de mayo.

826. Según la información recibida, a los jueces Guillermo López y Luis Alfonso Chévez, así como al Defensor Público Osman Fajardo, se les habría atribuido haber participado en manifestaciones contra el golpe de Estado; al juez Ramón Enrique Barrios lo

habrían cuestionado por haber publicado un artículo en un periódico en el que objetaba, con argumentos jurídicos, la posición de la Corte Suprema de denominar como sucesión constitucional a la destitución del ex-Presidente Manuel Zelaya. Finalmente, a la magistrada Flores se le habría sancionado por haber presentado un recurso de amparo constitucional a favor del ex-Presidente Zelaya y otros funcionarios.

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

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

Llamamiento urgente

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

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

831. Posteriormente, el día 19 de octubre de 2010, la misma abogada amenazada en septiembre, habría sido víctima de un secuestro en la ciudad de Tegucigalpa por parte de dos hombres armados los cuales la habrían obligado a introducirse en un taxi. Una vez en el vehículo, los individuos habrían intercambiado armas de fuego y habrían comentado entre ellos: “Sabes que nos pagaron para ejecutarla, tenemos que hacerlo”. Después, se habrían dirigido a la abogada y le habrían preguntado: “¿Trabajas para ASJ? ¿Quién te paga? ¿Cuánto te paga? ¿Estás investigando a SETECH?” Sin embargo, 40 minutos después de haberla retenido, los dos hombres la habrían dejado bajar del vehículo cerca de unos grandes almacenes.

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

cuatro trabajadores de ASJ. Según la información recibida, después del asesinato del Sr. Díaz García, ASJ habría suspendido el acompañamiento legal de los trabajadores de SETECH.

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

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

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

Observaciones

836. El Relator Especial lamenta que, en el momento de finalizar este informe, no se había recibido respuesta a 18 comunicaciones enviadas. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato es por ello que insta al Gobierno a que le proporcione una respuesta acerca de los casos mencionados.

837. El Relator Especial expresa su especial preocupación por el contexto de creciente violencia e inseguridad para los periodistas y defensores que trabajan documentando violaciones ocurridas durante las protestas pacíficas relacionadas con el golpe de Estado de 2009.

838. El 10 de mayo de 2010, el Relator Especial, junto con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y la Relatora Especial sobre la situación de los defensores de los derechos humanos, publicaron un comunicado de prensa en el cual exhortaron al Gobierno de Honduras a tomar medidas urgentes para enfrentar la creciente vulnerabilidad que padecen los periodistas en el país. Durante los meses de abril y mayo de 2010, siete profesionales de los medios fueron asesinados y varios otros recibieron amenazas, presuntamente por sus actividades en defensa de los derechos humanos. Los Expertos instaron al Gobierno a adoptar todas las medidas necesarias para investigar a fondo estas muertes y amenazas, perseguir a sus responsables y asegurar la integridad física y psíquica de todos los periodistas amenazados. En particular, exhortaron al Gobierno a llevar a cabo una investigación independiente que aclare estos hechos, y a que identifique

medidas para mejorar la protección de los periodistas y prevenir este tipo de actos en el futuro”.

Hungary

Allegation letter

839. On 18 January 2011, the Special Rapporteur, together with the Special Rapporteur on freedom of religion or belief, sent a letter of allegations to the Government regarding **two acts relating to the regulation of the media, namely the Press and Media Act (Act CIV of 2010) and the Media Services and Mass Media Act (Act CLXXXV of 2010)**, which have been adopted by the parliament of Hungary on 20 December 2010, and came into effect on 1 January 2011.

840. The Special Rapporteurs expressed their concern that the introduction of a new regime of media regulation through the adoption of these Acts constitutes a regressive step for press freedom and all individuals’ right to freedom of opinion and expression in the Republic of Hungary. The Special Rapporteurs’ main concerns include the fact that the types of media content deemed illegal in the two Acts are overly broad and vague, and the Acts are enforced by a non-independent entity. These factors will increase the likelihood of creating a chilling effect on the exercise of the rights to freedom of opinion and expression as well as freedom of thought, conscience and religion.

841. At the outset, the Special Rapporteurs reminded the Government that while the right to freedom of expression can be limited under certain circumstances, three clear-cut conditions must be respected for any limitation on the right to freedom of expression: (a) restrictions must be established in law, which is accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful; (b) they should pursue one of the aims listed in article 19 (3) of the International Covenant on Civil and Political Rights, and (c) they must be proportionate to the accomplishment of that aim, in a sense that the benefit to the protected interest must outweigh the harm to freedom of expression, including in respect to the sanctions imposed, and constitute the least intrusive means to achieve the aim without jeopardizing the respect for the right to freedom of expression (see for example the latest report to the Human Rights Council by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23). In addition, any laws restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse.

842. The Special Rapporteurs expressed concern that the provisions in the Press and Media Act and the Media Services and Mass Media Act do not meet the criteria outlined above. In particular, the Special Rapporteurs expressed their concerns regarding the following provisions, which they deem to be particularly problematic.

843. Section VI of the Press and Media Act outlines several obligations of the press, including provisions which stipulate that “all media content providers shall provide authentic, rapid and accurate information on local, national and European Union affairs and on any event that bears relevance to the citizens of the Republic of Hungary and members of the Hungarian nation” (article 13 (1), Press and Media Act), and that “linear and on-demand media content providers engaged in news coverage operations shall provide comprehensive, factual, up-to-date, objective and balanced coverage on local, national and European issues that may be of interest for the general public and on any event bearing relevance to the citizens of the Republic of Hungary and members of the Hungarian nation” (article 13 (2), Press and Media Act).

844. While the Special Rapporteurs acknowledged the importance of the media to uphold the highest standards of ethics and professionalism, such standards should be adhered to voluntarily, rather than as obligations with legal sanctions (see for example the latest report to the General Assembly by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/65/284, para. 22). It is unclear how the legal requirements for the media to provide “authentic, rapid and accurate information” or “comprehensive, factual, up-to-date, objective, and balanced coverage” is necessary for achieving one of the aims set out in article 19 (3) of the International Covenant on Civil and Political Rights, and the Special Rapporteurs are concerned that the plurality and diversity of views and information transmitted by the media may be undermined.

845. Article 14 (1) of the Press and Media Act provides that “the media content provider shall – in the media content that it publishes and while preparing such media content – respect human dignity”, and article 14 (2) stipulates that “no self-gratifying and detrimental coverage of persons in humiliating or defenceless situations is allowed in the media content.” In relation to these provisions, the Special Rapporteurs reminded the Government that limitations to the right to freedom of expression can only be imposed to protect the purposes enunciated in articles 19 (3) or 20 of the International Covenant on Civil and Political Rights. In this regard, they noted with concern that “respect for human dignity”, and the prohibition of content that is “self-gratifying and detrimental coverage of persons in humiliating or defenceless situations”, constitute overly broad grounds for limiting the right to freedom of expression. The Special Rapporteurs also underscored that public officials and authorities should not take part in the initiation of defamation cases and tolerate more criticism because of the nature of their mandate, since public office entails public scrutiny as part of checks and balances in any democratic society (see for example E/CN.4/2006/55, para. 55).

846. Although article 6 (1) of the Press and Media Act guarantees the right of media content providers to keep the identity of its informant confidential, article 6 (3) stipulates that “in exceptionally justified cases, courts or authorities may – in the interest of protecting national security and public order or uncovering or preventing criminal acts – require the media service provider and any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider to reveal the identity of the informant.” The Special Rapporteurs emphasized that protection of national security may not be used as a reason to compel journalists to reveal confidential sources, as enunciated in Principle 18 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (as endorsed in the 1996 report by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/1996/39). Moreover, the Special Rapporteurs expressed their concern over the provision which authorizes forced disclosure of identity for the too broadly defined purposes of “uncovering or preventing criminal acts”, which may thus be subject to abuse. Furthermore, the Special Rapporteurs noted that “authorities”, which is not defined further, in addition to courts, may request for the disclosure of identity of the source, and are concerned that there are insufficient guarantees to ensure that such disclosure is not done in a manner that is arbitrary or free of political influence.

847. The Special Rapporteurs are also concerned about several provisions in the Press and Media Act which refer to religious groups and communities, including article 11, which states that “the public service media operates in order to preserve and strengthen integrity both on a national and European level, foster national, family, ethnic and religious communities”; article 17 (1), which states that “media content may not incite hatred against persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups”; article 17 (2) which stipulates that “the media content may not offend or discriminate against – whether expressly or by implication – persons, nations, communities, national, ethnic, linguistic and other minorities or any

majority as well as any church or religious groups”; and article 20 (5), which stipulates that “[n]o media content with a commercial announcement that may offend religious or ideological convictions may be published”.

848. With regard to article 17 of the Press and Media Act, the Special Rapporteurs recognized the importance of prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and of protecting individuals from all forms of discrimination. However, the Special Rapporteurs are concerned that the wording of article 17 of the Press and Media Act is overly broad, since it prohibits content that would merely “offend”, and even “by implication” – without necessarily inciting discrimination or hatred – “persons, nations, communities, national, ethnic, linguistic and other minorities or any majority” as well as “any church or religious groups”. Similarly, the Special Rapporteurs are concerned at the formulation in article 11 of the Press and Media Act (“the public service media operates in order to [...] foster national, family, ethnic and religious communities [...]”) and its article 20 (5) concerning the nonpublication of “media content with a commercial announcement that may offend religious or ideological convictions”. As the Special Rapporteurs have stated on many occasions, abstract or subjective notions or concepts, such as the State, national symbols, national identity, cultures, schools of thought, religions, ideologies or political doctrines should not be protected as such. Otherwise, the rigorous protection of religions as such may create an atmosphere of intolerance and can give rise to fear and may even provoke the chances of a backlash (see A/HRC/2/3, para. 42). The Special Rapporteurs also reiterated that international human rights law protects individuals and groups of people, but not abstract notions or institutions that are subject to scrutiny, comment, criticism or ridicule (see A/HRC/14/23, para. 84 and A/HRC/2/3, paras. 27, 36 and 38).

849. Compliance with these provisions is overseen by a National Media and Infocommunications Authority (hereinafter the “Authority”), consisting of three entities as set out in article 109 of the Media Services and Mass Media Act: the President of the Authority, who is appointed by the Prime Minister of Hungary for a period of nine years; a Media Council of the Authority (hereinafter the “Media Council”), whose members are appointed by two thirds of the members of the Parliament for a period of nine years; and a Bureau of the Authority (hereinafter the “Bureau”), headed by a Director-General who is appointed by the President of the Authority. The Media Council in particular is mandated to prohibit unlawful conduct (article 186, Media Services and Mass Media Act), and “apply legal consequences” for breaches of the Press and Media Act (article 3 (4), Press and Media Act). Such “legal consequences” include suspension of a media service provider for up to one week in cases of repeated and grave infringements (article 187(3), Media Services and Mass Media Act), as well as imposition of fines of up to HUF 50,000,000 for a media service provider, HUF 25,000,000 for a newspaper with nationwide distribution, HUF 10,000,000 for a weekly periodical with nationwide distribution, HUF 5,000,000 for other newspapers or periodicals, HUF 25,000,000 for an online media product, HUF 5,000,000 for a broadcaster, and HUF 3,000,000 for an intermediary service provider (article 187 (3), Media Services and Mass Media Act).

850. As mentioned previously, any limitations to the right to freedom of expression should be applied by a body that is independent of any political, commercial, or other unwarranted influences. The Special Rapporteurs are concerned that the appointment process for the members of the Authority, which includes the President, Media Council and the Bureau, does not guarantee the independence of the Authority, given that the President is appointed by the Prime Minister, who is also empowered to appoint the Director-General of the Bureau, and the members of the Media Council are appointed by two thirds of the members of Parliament, or the dominant political party. In this regard, the Special Rapporteurs noted that 263 out of 386 Members of Parliament (or 68 percent) are from the ruling FIDESZ-KDNP list. Additionally, the Special Rapporteurs are concerned that the

financial sanctions to be imposed for a violation of legislation related to the media are determined by the Authority, rather than an independent judiciary.

851. The Special Rapporteurs indicated that they stand ready to provide the Government with support and assistance regarding the concerns outlined in this communication, in accordance with the mandates given to them by the Human Rights Council that the Special Rapporteurs provide advisory services or technical assistance when requested by the State concerned. The Special Rapporteurs also requested information from the Government clarifying how it intends to address the concerns raised in this communication.

Response from the Government

852. In a letter dated 2 February 2011, the Government of Hungary replied to the letter of allegations of 18 January 2011.

853. The Government emphasized that it was firmly committed to freedom of the press and freedom of expression. Hungary had expressed this commitment not only by taking part in the framework of the International Covenant on Civil and Political Rights, but also by acceding to other important international legal instruments, such as the European Convention on Human Rights. Based on the Government's international commitments, freedom of expression had also been recognised as one of the most important fundamental values of the country's legal system by a series of landmark decisions in the Hungarian Constitutional Court.

854. According to the Government, the purpose of the recent legislation relating to media services (Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules Governing Media Content [the Press and Media Act] and Act CLXXXV of 2010 on Media Services and Mass Communication [Media Services and Mass Media Act]) was to safeguard freedom of the press and freedom of expression, while at the same time achieving a corresponding balance with other fundamental rights – such as the right to human dignity, the rights of minors, and consumers' rights. The Government believed that by recently adopting a set of new acts related to the media it had secured this balance in accord with its international commitments, most notably with Article 19 of the International Covenant on Civil and Political Rights.

855. With the above in mind, the Government reacted to the comments in the Special Rapporteurs' letter related to particular aspects of the recent Hungarian media legislation:

Obligations related to information and news services

856. The Special Rapporteurs had quoted in their letter Article 13 (1) of the Press and Media Act. The Government noted that the quoted English translation of the text was incorrect at this point. The provision, in effect, was a declarative one. It established that the totality of the whole Hungarian media system shall provide adequate information to citizens. Contrary to the interpretation in the Special Rapporteurs' letter, it did not provide for any legally enforceable obligation for each and every media content provider.

857. As regards other provisions related to balanced presentation of news, the Government emphasized that this was not a legal requirement for the print media or internet news providers under the present Hungarian legislation. According to Article 13 (2) of the Press and Media Act, it was applicable only to radio, television and television-like media content (i.e. non-linear audiovisual media services, within the meaning of the corresponding European Union directive). In the event of a violation of this obligation, the only "sanction" applicable by the authorities was the obligation to make viewers/listeners aware that they had received biased or inaccurate information, or the obligation to remedy biases and/or inaccuracies in the presentation. It was apparent from Article 181 (5) of the Media Services and Mass Media Act that there was no possibility of applying any other

sanction in this regard. The obligation to provide balanced coverage could be found in many legal systems throughout the world. In this context, Recital 102 of Directive 2010/31/EU of the European Parliament and of the Council explicitly referred to the common practice of imposing the obligation on television broadcasters to present facts and events fairly.

858. The Government also pointed out that the requirement of balanced presentation had been in existence in the Hungarian legislation since 1996. The requirement was supported by the decisions of the Hungarian Constitutional Court; its precise content had been developed over the 15-year lifespan of the former media authority, and in the Hungarian courts. The Government stressed that courts performing judicial review concerning the related activities of the media authority were bound by this substantial body of constitutional jurisprudence – just as the authority itself. Given the fact that the precise content of the said requirement was well defined in case law, the Government stated that media content providers were not facing a new, “overly broad” or “vague” concept in this respect, the application of which may produce a “chilling effect” on them.

The notion of human dignity

859. The application of the provisions of Article 14 (1) and 14 (2) of the Press and Media Act raised, in the Special Rapporteurs’ judgment, unjustified limitations on the right of freedom of expression, given the “overly broad grounds of limitation”, such as respect for human dignity. However, the Government indicated that the notion of human dignity was another well-defined notion in the Hungarian legal system, with numerous interpretative decisions by the Hungarian Constitutional Court, the former media authority and the Hungarian courts. Moreover, human dignity was explicitly referred to in the European audiovisual media legislation, particularly in the Directive on Audiovisual Media Services and in related recommendations by the European Parliament and the Council. The concept was also present in the jurisprudence of the European Court of Human Rights. As a consequence, the legal concept of “human dignity” had become instrumental in combating racism, xenophobia and hate speech in Europe. Therefore the Government was convinced that its use in the Hungarian legislation was an important safeguard of democratic values, and in no way constituted an unjustified restriction on freedom of the press or freedom of expression.

860. As regards the Special Rapporteurs’ comment concerning defamation cases related to public officials and authorities, the Government noted that well-established case law from the Hungarian courts – based on a decision by the Hungarian Constitutional Court – clearly defined the limits and the scope of criticism that holders of public office must tolerate. The approach taken by the Constitutional Court and by the courts of Hungary was consistent with the Council of Europe declaration adopted by the Committee of Ministers on 12 February 2004 at the 872nd meeting of the Ministers’ Deputies on “freedom of political debate in the media”. In line with this declaration, the Hungarian legislation continued to fulfil the requirement that “political figures and public officials should only have access to those legal remedies against the media which private individuals have in case of violations of their rights by the media”. Against this background, the Government also noted that the exclusion of those holding public office from any form of legal remedy in the event of the violation of their dignity – as expressed in the Special Rapporteurs’ letter – seemed to be a requirement going beyond what was necessary to ensure the possibility of public scrutiny.

The protection of journalistic sources

861. As regards the protection of journalists’ sources, the Government drew the Special Rapporteurs’ attention to Article 6 (1) of the Press and Media Act, which explicitly stated

that media outlets and journalists “are entitled to keep the identity of their sources confidential.” This general right of confidentiality also extended to court and authority proceedings: in other words, it granted those in the media exemption from the obligation to testify. According to these rules, journalists could only be required to disclose their sources of information in court or authority proceedings when there was exceptional justification. The definition of these exceptions corresponded to Article 10 of the European Convention on Human Rights.

862. Furthermore, the Government Please noted that although Article 6 (3) of the Press and Media Act stated that courts and authorities may, in exceptional cases, request the disclosure of the identity of the source, this did not in itself mean that *any* court or *any* authority was vested to implement this power, regardless of the procedure or investigation it pursued. In fact, this provision may only be applied in the context of criminal investigation, as identification of sources may only be requested “in the interest of protecting national security and public order or uncovering or preventing criminal acts” – this limited the scope of the provision to authorities with criminal investigative powers defined in other statutory provisions, such as the Code on Penal Procedure. It should also be noted that such decisions were always subject to judicial review by the courts. The Government was convinced that this set of guarantees excluded the possibility of any arbitrary rulings.

863. The Government also emphasized that prior to the adoption of the Press and Media Act the scope for protection of journalistic sources was much narrower under Hungarian law. Under the legal regime of Act 11 of 1986 on the Press (the relevant act in force prior to the adoption of the Press and Media Act and Media Services and the Mass Media Act), journalistic sources did not enjoy any special protection in the context of criminal proceedings. In the light of this, the Government was convinced that the provisions of the Press and Media Act regarding the right of journalists to protect their sources of information could not be described as a “regressive step” in any way.

Actions against incitement to hatred and discrimination

864. In the context of actions against incitement to hatred and discrimination, the Government noted that the Special Rapporteurs’ letter referred to various provisions, differing in both nature and context. The first of these provisions was Article 11 of the Press and Media Act, defining the basic role of public service media. Among other international documents, the Council of Europe Recommendation CM/Rec(2007)3 of the Committee of Ministers on the remit of public service media in the information society stated that “member states have the competence to define and assign a public service remit to one or more specific media organisations”. This competence was also recognised by European Union law and by several other documents of international law.

865. Another quoted provision was Article 20 (5) of the Press and Media Act, protecting religious and ideological convictions with regard to advertising. In this context the Government referred to the practice of the European Court of Human Rights, which granted a greater margin of interpretation to states when determining advertising regulation, given that such forms of communication – although also protected by the European Convention on Human Right – were less linked to democratic and social values than to economic ones.

866. According to the Government, the purpose of Article 17 of the Press and Media Act was to provide the opportunity for effective legal remedies when addressing problems related to racism, xenophobia or anti-Semitism – thereby helping to prevent the development of a climate of intolerance. Based on this aim, the article sought to combat all ideologies, policies and practices characterized by incitement to racial hatred, violence and discrimination, as well as any action or language likely to strengthen fears and tensions between groups from different racial, ethnic, national, religious or social backgrounds.

867. The Government was aware that the balance between securing freedom of expression and promoting a culture of tolerance was an extremely delicate one, and finding it posed a substantial challenge to all legal systems. However, the Government was confident that its legislation drew appropriate boundaries to freedom of expression also in this respect. At this instance the Government referred again to the importance of the judicial review over the activities of the media authority as granted by the Press and Media Act that ensured this balance at the level of the practice.

The independence and sanctioning powers of the regulatory authority

868. Finally, as regards the Special Rapporteurs' concerns over the independence of the National Media and Infocommunications Authority – and the Media Council therein – the Government noted that the Media Council was comprised of specialists elected by a two thirds majority in the Hungarian National Assembly. The Government believed that the fact that they are elected by Parliament was itself proof enough that they could not be regarded as political appointees. The Hungarian legislation provided substantial guarantees to ensure their independent conduct in their office: in performing their duties, members of the Media Council could not take orders from anyone; they could not be recalled; and they had to comply with strict rules on conflict of interest. The elected members of the Media Council were expected to have no ties – either formal or informal – to any political party, or to the Government. Media authorities with a much smaller degree of independence from their respective governments were not uncommon across Europe: in several countries it was the Government, the Head of State or a minister that appointed the members of such authorities.

869. With regard to the imposition of fines and other sanctions by the Authority, the Government referred to Article 185 (2) of the Media Services and Mass Media Act, which stated that “in applying the legal consequence, the Media Council and the Office – under the principle of equal treatment – shall act in line with the principles of progressivity and proportionality; shall apply the legal consequence proportionately in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the legal consequence”. This provision was complemented by 187 (2) of the same act, stating: “The Media Council and the Office shall impose the legal consequence – depending on the nature of the infringement – taking into account the gravity of the infringement, whether it was committed on one or more occasions or on an ad-hoc or continuous basis, its duration, the pecuniary benefits earned as a result of the infringement, the damage to interests caused by the infringement, the number of persons aggrieved or jeopardized by the damage to interests, the damage caused by the infringement and the impact of the infringement on the market and other considerations that may be taken into account in the particular case.” According to the Government, these provisions effectively excluded the possibility of disproportionate sanctioning by the Authority.

870. The Government also noted that the Media Services and Mass Media Act granted the possibility of judicial review for all of the Authority's decisions. The media service provider concerned could challenge the decision of the Media Council by launching an appeal at the competent court. The court may dismiss the decision of the Authority or amend it. Therefore the entire conduct of the National Media and Telecommunications Authority was under the supervision of the courts.

871. The Government was confident that the above explanations relating to the Hungarian legislation on media services provided the Special Rapporteurs with the further insight necessary to assess the conformity of the legislation with fundamental rights, and in particular with the International Covenant on Civil and Political Rights. Should the Special Rapporteurs consider it necessary, the Government was willing to provide further clarifications necessary for the finalization of the Special Rapporteurs' report. The

Government also informed that it was currently in negotiations with the European Commission relating to possible amendments to the Hungarian legislation.

Communication sent on 31 March 2011

872. On 31 March 2011, the Special Rapporteur, together with the Special Rapporteur on freedom of religion or belief, sent a non-exhaustive commentary on some of the issues in the amended media legislation most relevant from the perspective of his mandate and, wherever relevant and appropriate, the mandate of the Special Rapporteur on freedom of religion or belief, as follows.

I. Introduction

873. On 20 December 2010, the Parliament of Hungary adopted the Law on the Freedom of the Press and the Fundamental Rules on Media Content (Act CIV of 2010) (the “Press and Media Act”) and the Media Services and Mass Media Act (Act CLXXXV of 2010) (the “Media Law”), which entered into force on 1 January 2011.

874. The aforementioned acts are part of a broader “media package”, which implicated, *inter alia*, the amendment of Article 61 of the Hungarian Constitution, passed on 6 July 2010, and which removed the obligation of the Parliament to pass a law aimed to “preclude information monopolies”, *i.e.* the obligation of the State to uphold pluralism. Instead, the amendment introduced a “citizen’s right to be provided with ‘proper’ or ‘adequate’ information about public life”.

875. The two acts were reportedly passed on an expedited basis without effective consultations with journalists’ associations, civil society and other stakeholders. The new media legislation uses the term ‘media product’ in an unusually broad way. It includes not only the printed press and broadcast media, but also Internet-based content. The scope of the legislation covers all media services and products that can be “consumed” in Hungary, regardless of the location of the media provider.

876. In our joint communication of 18 January 2011, we expressed concern at the fact that the new regime of media regulation in Hungary classifies certain types of media content as unlawful on overly broad and vague grounds and provides high administrative fines. Likewise, we expressed concern that the legislative acts in question are enforced by a non-independent and non-impartial regulatory body. We would like to thank the Government of Hungary for its responses provided on 2 February and 8 March 2011, the informal discussion held on 10 February in Vienna, and the invitation extended to us for a technical cooperation visit to the Republic of Hungary.

877. On 7 March 2011, the Parliament of Hungary adopted a number of amendments to the new media legislation. While we welcome efforts to improve the two Acts, we remain concerned about the conformity of the amended media legislation with international human rights norms and standards.

878. In the spirit of our ongoing dialogue and cooperation with the Government of Hungary, we seek to provide, through this memorandum, a non-exhaustive commentary on the principal issues that merit close scrutiny.

II. *General Analysis of the Media Legislation*

A. The right to freedom of expression and information and its limitations

879. The right to freedom of expression is guaranteed by Article 19(2) of the International Covenant on Civil and Political Rights (the “ICCPR”),¹⁰ which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” This provision thus protects every communicable type of subjective idea and opinion, of value-neutral news and information, of commercial advertising, art works, critical political commentary, pornography, etc. In addition, every medium of communication is protected, including the press, assemblies and demonstrations, radio and television, electronic media such as the Internet, film, music, graphic arts, and so forth. Moreover, Article 19(2) of the ICCPR does not only guarantee the rights of individuals to be passive recipients of information, but it also ensures their right to seek information.

880. While the right to freedom of expression can be limited under certain circumstances, such limitations are subject to the following conditions:

(a) restrictions must be established in law, which is accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful;

(b) they should pursue one of the aims listed in article 19(3) of the [ICCPR], and

(c) they must be proportionate to the accomplishment of that aim, in a sense that the benefit to the protected interest must outweigh the harm to freedom of expression, including in respect to the sanctions imposed, and constitute the least intrusive means to achieve the aim without jeopardizing the respect for the right to freedom of expression.

881. Any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse.

882. In the view of the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, the following principles can be used to determine the conditions that must be satisfied in order for a limitation or restriction on freedom of expression to be permissible:

(a) The restriction or limitation must not undermine or jeopardize the essence of the right of freedom of expression;

(b) The relationship between the right and the limitation/restriction or between the rule and the exception must not be reversed;

(c) All restrictions must be provided for by pre-existing statutory laws issued by the legislative body of the State;

(d) Laws imposing restrictions or limitations must be accessible, concrete, clear and unambiguous, such that they can be understood by everyone and applied to everyone. They must also be compatible with international human rights law, with the burden of proving this congruence lying with the State;

¹⁰ The Government of Hungary ratified the ICCPR on 17 January 1974.

(e) Laws imposing a restriction or limitation must set out the remedy against or mechanisms for challenging the illegal or abusive application of that limitation or restriction, which must include a prompt, comprehensive and efficient judicial review of the validity of the restriction by an independent court or tribunal;

(f) Laws imposing restrictions or limitations must not be arbitrary or unreasonable and must not be used as a means of political censorship or of silencing criticism of public officials or public policies;

(g) Any restrictions imposed on the exercise of a right must be “necessary”, which means that the limitation or restriction must:

- Be based on one of the grounds for limitations recognized by the Covenant;
- Address a pressing public or social need which must be met in order to prevent the violation of a legal right that is protected to an even greater extent;
- Pursue a legitimate aim;
- Be proportionate to that aim and be no more restrictive than is required for the achievement of the desired purpose. The burden of demonstrating the legitimacy and the necessity of the limitation or restriction shall lie with the State;

(h) Certain very specific limitations are legitimate if they are necessary in order for the State to fulfil an obligation to prohibit certain expressions on the grounds that they violate the rights of others. These include the following:

- (i) Article 20 of the Covenant, which establishes that “any propaganda for war” and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”;
- (ii) Article 3, paragraph 1 (c), of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which provides that States must ensure that their criminal law covers “producing, distributing, disseminating, importing, exporting, offering, selling or possessing [...] child pornography”;
- (iii) Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, which establishes the requirement to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin”;
- (iv) Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide, which states that “direct and public incitement to commit genocide” shall be punishable;

(i) Restrictions already established must be reviewed and their continued relevance analysed periodically;

(j) In states of emergency which threaten the life of the nation and which have been officially proclaimed, States are permitted to temporarily suspend certain rights, including the right to freedom of expression. However, such suspensions shall be legitimate only if the state of emergency is declared in accordance with article 4 of the ICCPR. General Comment No. 29 of the Human Rights Committee (the “HRCtee”) provides clear guidance on such suspensions. A state of emergency may not under any circumstances be used for the sole aim of restricting freedom of expression and preventing criticism of those who hold power;

(k) Any restriction or limitation must be consistent with other rights recognized in the Covenant and in other international human rights instruments, as well as with the fundamental principles of universality, interdependence, equality and non-discrimination as to race, colour, sex, language, religion, political or other belief, national or social origin, property, birth or any other status;

(l) All restrictions and limitations shall be interpreted in the light and context of the particular right concerned. Wherever doubt exists as to the interpretation or scope of a law imposing limitations or restrictions, the protection of fundamental human rights shall be the prevailing consideration.¹¹

883. As provided in paragraph 5 (p) of Human Rights Council (the “HRC”) resolution 12/16, restrictions on the following aspects of the right to freedom of expression are not permissible:

- (i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;
- (ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;
- (iii) Access to or use of information and communication technologies, including radio, television and the Internet.¹²

B. The Press and Media Act

884. The Press and Media Act stipulates that media providers operating in, or targeted at, the Republic of Hungary are obliged to provide proper, authentic and accurate information to the public. We consider that the requirement for broadcast news reports to be “comprehensive, factual, up-to-date, objective and balanced” is problematic to fully guarantee the right to freedom of expression, particularly as grants a considerable degree of discretion to the National Media and Info-Communications Authority (the “Media Authority”) to interpret such concepts. The Media Authority is a regulatory body established pursuant to the Press and Media Act. It is comprised of a President, the Media Council, the Media Commissioner and the Bureau. This body is entitled inter alia to deny registration of media; to interpret the law and decide what constitutes “public interest”, “public morals”, “balanced coverage”; to perform supervisory and control tasks over the compliance with the law; and to impose penalties on the media service providers which violate the legislation. While the Press and Media Act guarantees journalists’ right to protect their sources from disclosure, not only courts but also other authorities can request journalists to do so in exceptionally justified cases, namely “in the interest of protecting national security and public order or uncovering or preventing criminal acts”.

C. The Media Law

885. The Media Law has been a subject of strong criticism by a number of international organizations (Organization for Security and Co-operation in Europe (the “OSCE”), European Union (the “EU”)), Governments (Germany, France, Luxembourg and the Czech

¹¹ UN Doc. A/HRC/14/23, para. 79.

¹² UN Doc. A/HRC/14/23, para. 81.

Republic) and civil society (Amnesty International, Hungarian Civil Liberties Union, Article 19, etc.). One of our main concerns is that the legal consequences ensuing from violations of the legislation are subject to discretion of the Media Authority, which fails to comply with standards of independence and impartiality, both in terms of its composition and appointment process. We are also concerned that regulations specified in the Act apply to all types of media, including press, Internet, blogs and foreign media available in Hungary. Media content providers may face fines of up to HUF 200 million (€20,000) for television and radio, and up to HUF 25 million HUF (€0,000) for print and online publications. These fines can be imposed repeatedly, and the Media Authority is authorized to suspend or ban the distribution of a media product in the event of repeated violations of the enacted legislation.

III. *Article by Article Commentary on the Press and Media Act*

886. This section provides a commentary on those articles of the Press and Media Act, which we find most problematic in terms of their compliance with international human rights norms and standards. For ease of reference, each comment is preceded by relevant extracts from the law. The amended provisions, as adopted on 7 March 2011 by the Parliament of Hungary, are already taken into account (deletions appear in brackets and strikethrough mode, while additions are underscored).

Article 1 [as amended] – [Ibid. Art. 203 of the Media Law]

1. Media service shall mean any economic service as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, pursued independently, businesswise – on a regular basis for profit, taking economic risk – for which the media service provider bears editorial responsibility, the primary aim of which is the delivery of programmes to the general public for informational, entertainment or educational purposes through an electronic communications network.

(...)

6. [Printed] press [materials] product [...] shall mean individual issues of daily newspapers or other periodical papers, internet newspapers or news portals, which are offered as an economic service, for the content of which a natural or legal person, or a business entity with no legal personality has editorial responsibility, and the primary purpose of which is to deliver textual or image content to the general public for information, entertainment or educational purposes, in a printed format or through any electronic communications network. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the press product. Economic service shall mean any service pursued independently, businesswise – on a regular basis for profit, taking economic risk.

887. The printed press and the Internet-based media have so far been virtually free from any regulation. We believe that the scope of the law as it stands creates an unprecedented restriction to these forms of media content. It remains unclear, for example, whether in the light of the present legislation, an Internet blog could qualify as an economic service.

Article 3

(...)

(2) This Act shall apply to media services and printed press materials targeted at or distributed or published in the territory of the Republic of Hungary that are not deemed as established in any Member State of the European Economic Area, and the media services or printed press materials that fall under the scope of the Act under Article 2 and paragraphs (1)-(2).

(...)

888. The reference to “targeted at” contained in Article 3(2) remains unclear. If the majority of the media service provider is established outside the EU, would the Act apply to its media outlet operating or targeted at the Republic of Hungary? This could involve seeking to block access to any such content originating from abroad.

889. The territorial scope of the measures, as prescribed in Article 3, would not be in conformity with inter alia Principle 3 of the Council of Europe Declaration on freedom of communication on the Internet, which provides that “[p]ublic authorities should not, through general blocking or filtering measures, deny access by the public to information and other communication on the Internet, regardless of frontiers. This does not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries”.

890. Similarly, it is difficult to see how Article 3 of the present Act can be reconciled with Recommendation CM/Rec (2008)6 of the Committee of Ministers of the Council of Europe, which in its paragraph 5 provides that Member States shall “refrain from filtering Internet content in electronic communications networks operated by public actors for reasons other than those laid down in Article 10, paragraph 2, of the European Convention on Human Rights [(the “ECHR”)], as interpreted by the European Court of Human Rights [(the “ECtHR”)]; to take such action only if the filtering concerns specific and clearly identifiable content, a competent national authority has taken a decision on its illegality and the decision can be reviewed by an independent and impartial tribunal or regulatory body, in accordance with the requirements of Article 6 of the European Convention on Human Rights”.

891. We find that the reference to “distributed or published in the territory of the Republic of Hungary” is also problematic. It could apply to any person, even a foreigner, who uses a computer or similar equipment in the territory of Hungary to upload any content onto the Internet. In other words, it could easily amount to a system which aims to prevent “unwanted” content without following any guidelines with the view to avoiding arbitrariness.

Article 4

(...)

(3) The exercise of the freedom of the press may not constitute or abet an act of crime, violate public morals or prejudice the inherent rights of others.

892. In terms of the purposes for interference with the right to freedom of expression, Article 19(3) of the ICCPR “permits fewer restrictions than Art. 10(2) of the ECHR”.¹³ Art. 10(2) of the ECHR contains the following references for interference with freedom of expression, which were expressly not adopted in Art. 19(3) of the ICCPR on the grounds of being too specific: (a) in the interest of territorial integrity or public safety; (b) for the prevention of disorder or crime; (c) for preventing the disclosure of information received in confidence; (d) for maintaining the authority and impartiality of the judiciary. Although these purposes for interferences may be taken into account on a case-by-case basis, a relatively limited number of reasons for permissible interference in the ICCPR indicated that “these are to be interpreted narrowly in cases of doubt”.¹⁴

¹³ M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. version, (Kehl, N.P. Engel Publisher, 2005), p. 461.

¹⁴ *Ibid.*

893. Article 4(3) of the Press and Media Law contains a reference to “public morals” which, in our view, requires further precision, since it may be subject to overly broad and vague interpretation.

894. In *Hertzberg et al. v. Finland*, the United Nations Human Rights Committee (the “HRCtee”) noted that “public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities”.¹⁵ It must be noted, however, that in their individual opinions, three Committee members stressed that the concept of public morals is relative and that any ensuing restrictions on freedom of expression should not be applied in a manner “as to perpetuate prejudice or promote intolerance. It is of special importance to protect freedom of expression as regards minority views, including those that offend, shock or disturb the majority”.¹⁶

895. In addition, we would like to recall that, in its General Comment no. 22 on freedom of thought, conscience and religion, the HRCtee stated the following: “[l]imitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”.¹⁷

896. As far as the protection of “the inherent rights of others” is concerned, the principle of proportionality must be strictly observed in this area. Article 4(3) does not provide for such a balancing exercise, imposing an absolute prevalence of the right to privacy by stating that the exercise of the freedom of the press may not “prejudice the inherent rights of others”. It is true that States parties to the ICCPR, pursuant to Art. 17(1) in conjunction with Art. 19(3) are bound to provide statutory protection against *unlawful* or *intentional* infringement on honour and reputation by *untrue* assertions.¹⁸ However, “particularly in the political arena, not every attack on the good reputation of others must be sanctioned, since freedom of expression and information (especially freedom of the media) would otherwise be stripped of their fundamental importance for the process of formation of political opinion”.¹⁹

Article 5

(1) The Act may set official registration as a precondition for the commencement of media services and the publication of printed press materials. The conditions set for registration may not restrict the freedom of press.

(2) When limited state-owned resources are used by the media service provider, successful participation in a tendering procedure advertised and conducted by the

¹⁵ HRCtee, *Leo Hertzberg et al. v. Finland*, Communication No. 61/1979, UN Doc. CCPR/C/OP/1, para. 10.3; *Delgado Paez v. Colombia*, Communication No. 195/85, UN Doc. CCPR/C/39/D/195/1985. See also, ECtHR, *Handyside v. the United Kingdom*, Judgment of 7 December 1976, Series A. No. 24, para. 48.

¹⁶ HRCtee, *Leo Hertzberg et al. v. Finland*, Communication No. 61/1979, UN Doc. CCPR/C/OP/1, Individual opinion by Committee members Opsahl, Lallah and Tarnopolsky.

¹⁷ HRCtee, General Comment no. 22 (1993), para. 8.

¹⁸ M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. version, (Kehl, N.P. Engel Publisher, 2005), pp. 462 and 404.

¹⁹ *Ibid.*, p. 462.

Media Authority may also be set as a condition for the commencement of the media service.

897. It is our understanding that, by providing for an official registration as a precondition for the commencement of media services, the publication of printed press materials and successful participation in a tendering procedure in cases of limited state-owned resource, the Press and Media Act seems to unnecessarily restrict the diversity and equal opportunity of the media providers, without setting adequate and impartial procedures for their selection. This obligation seems to apply not only to television and radio stations, but also to online and printed press.

898. With regard to online press, we believe that any requirement to register websites with Governmental authorities is not acceptable. Unlike licensing scarce resources such as broadcasting frequencies, an abundant infrastructure like the Internet does not justify official assignment of licenses. We share the view that “mandatory registration of online publications might stifle the free exchange of ideas, opinions, and information on the Internet”.²⁰

899. This requirement is unprecedented inside the EU and is prohibited by the Council of Europe guidelines. It may also amount to a violation of Article 11 of the Charter of Fundamental Rights of the European Union. The registration system creates a legal, administrative and potentially a political barrier to the entry of new media service providers and it could be used to silence the existing ones (please refer to the commentary of Article 46 of the Media Law).

900. Moreover, we are concerned that registration can be denied by the Media Authority, whose independence and impartiality are not guaranteed (please refer to the commentaries of Articles 42, 102, 109-111 of the Media Law), thereby posing a threat to the existence of independent and diverse media.

Article 6

(1) The media content provider and any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider shall have the right to keep the identity of its informant confidential (hereinafter referred to as: source of information). The right to keep such data confidential shall not apply to the protection of sources disclosing qualified data unlawfully.

(2) The media content provider and any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider shall have the right to keep the identity of their sources of information confidential even in judicial or other official proceedings, provided that the information thereby supplied were disclosed in the interest of the public.

(3) In exceptionally justified cases, courts or authorities may – in the interest of protecting national security and public order or uncovering or preventing criminal acts – require the media service provider and any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider to reveal the identity of the informant.

901. Although Article 6(1) guarantees the right of media content providers to keep the identity of its informant confidential, article 6(3) stipulates that “in exceptionally justified

²⁰ Joint declaration of the OSCE Representative on Freedom of the Media and Reporters Sans Frontières on Guaranteeing Media Freedom on the Internet on the occasion of the Third Internet Conference of the OSCE Representative on Freedom of the Media in Amsterdam (17-18 June 2005).

cases, courts or authorities may – in the interest of protecting national security and public order or uncovering or preventing criminal acts – require the media service provider and any person employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider to reveal the identity of the informant”. Vaguely formulated exceptions such as ‘interest of protecting national security and public order’ may not be used as a reason to compel journalists to reveal confidential sources, as enunciated in Principle 18 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.²¹ Similarly, purposes such as uncovering or preventing criminal acts entail risk of abuse. Even more troublesome, in our view, is the reference to authorities as an alternative to courts. The law fails to specify the competent authorities that together with courts would be entitled to request disclosure of identity of the source. The provision leaves broad discretion to authorities to determine what qualifies as “exceptionally justified cases”.

902. In your Government’s response to our letter dated 18 February 2010, it was noted that although Article 6(3) of the Press and Media Act stated that courts and authorities may, in exceptional cases, request the disclosure of the identity of the source, this did not in itself mean that any court or any authority was vested to implement this power, regardless of the procedure or investigation it pursued. In fact, this provision may only be applied in the context of criminal investigation, as identification of sources may only be requested “in the interest of protecting national security and public order or uncovering or preventing criminal acts” – this limited the scope of the provision to authorities with criminal investigative powers defined in other statutory provisions, such as the Code on Penal Procedure. According to the information provided by your Government, such decisions were always subject to judicial review by the courts. Your Government also asserted that this set of guarantees excluded the possibility of any arbitrary rulings.

903. Your Government also emphasized that prior to the adoption of the Press and Media Act, the scope for protection of journalistic sources was much narrower under the Hungarian law (Act II. of 1986 on the press). Under the legal regime of Act 11 of 1986 on the Press, the relevant act before the recently enacted legislation, journalistic sources did not enjoy any special protection in the context of criminal proceedings. In the light of this, Your Government alleges that the provisions of the new legislation regarding the right of journalists to protect their sources of information could not be described as a “regressive step” in any way.

904. With respect to the comments provided by your Government, we would like to highlight the principal requirements for regulations, including legislation, interfering with the rights and freedoms. Any restriction to the freedom of expression must be established in law, which is accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful. At a very minimum, the present provision is not drawn narrowly and with precision given that it grants the possibility for any authority to request the disclosure of journalists’ sources.

905. In line with the rationale first outlined by the ECtHR in *Sunday Times v. the United Kingdom*, persons must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences that will follow from a given action.²²

²¹ See UN Doc. E/CN.4/1996/39.

²² ECtHR, *Sunday Times v. the United Kingdom*, Judgment of 26 April 1979, App. No. 6538/74, para. 49.

906. Both the Council of Europe Committee of Ministers²³ and the Parliamentary Assembly²⁴ have issued Recommendations regarding the protection of journalists' sources. In reference to Hungary, the Parliamentary Assembly stated that:

"Referring to the new Press and Media Law of Hungary (Law CIV of 2010 on the freedom of the press and the fundamental rules on media content), the Assembly expresses its concern that limits to the exercise of media freedom fixed by Article 4(3) and the exceptions to the right of journalists not to disclose their sources stipulated in Article 6 of this Law seem to be overly broad and thus may cause a severe chilling effect on media freedom. This Law sets forth neither the procedural conditions concerning disclosures nor guarantees for journalists requested to disclose their sources".²⁵

907. In *Sanoma Uitgevers B.V. v. the Netherlands*, apart from the standard of the "quality of law" (i.e. precision and foreseeability), the ECtHR stressed that Article 10 ECHR requires procedural safeguards in domestic law, including an assessment by an impartial and independent body against a decision not to protect a journalist's source.²⁶

908. The Johannesburg principles on national security, freedom of expression and access to information also specifically provide in Principle 18 that "protection of national security may not be used as a reason to compel a journalist to reveal a confidential source".

909. In our view, any decision compelling the disclosure is subject to an accurate assessment by an independent and impartial body and on the basis of precise and foreseeable guidelines. The present provision does not meet this benchmark.

Article 8

(1) The media content provider and the persons employed by or engaged, in any other legal relationship intended for the performance of work, with the media content provider may not be held liable for any breach of law committed in connection with obtaining information of public interest provided the particular piece of information could not have been obtained otherwise or when the difficulties endured while obtaining such information would be out of proportion, unless such breach of law constitutes a disproportionate or serious violation and such information was obtained in disregard of the Act on the protection of qualified data.

(2) The entitlement laid down in paragraph (1) does not constitute an exemption from the enforceability of claims under civil law for compensation for damage in property caused by such unlawful conduct.

910. Although in principle article 8 guarantees non-prosecution of journalists for violating the law in the process of obtaining information of "public interest" so long as the information could not have been obtained through legal means, we are concerned that this provision contains a considerably broad exception for those cases in which journalists reveal "qualified data" and it is unclear what kind of information constitutes such data.

²³ Council of Europe Committee of Ministers' Recommendation Rec (2000) 7 on the right of journalists not to disclose their sources of information.

²⁴ Council of Europe Parliamentary Assembly Recommendation 1950 (2011) on the protection of journalists' sources.

²⁵ *Ibid.*

²⁶ ECtHR, *Sanoma Uitgevers B.V. v. the Netherlands*, Judgment of 14 September 2010, App. No. 38224/03, paras. 88-90.

Article 10 [as amended]

Everyone shall have the right to receive proper information on public affairs at local, national and EU level, as well as on any event bearing relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation. It is a task for the entirety of the media system to provide authentic, rapid and accurate information on such affairs and events.

911. In our view, introducing terms such as “proper” into the provision on the right to information is tantamount to undermining guarantees of pluralism in Hungary’s constitutional order. It is difficult to see how terms such as “proper” and “authentic” correspond to the State’s obligation to ensure “range of opinion” and “diversity” as often referred in the judgments of the ECtHR. In *Manole et al. v. Moldova*, for example, the ECtHR stressed that States must be the ultimate guarantors of pluralism and that the principles on media pluralism derived from Article 10 ECHR “place a duty on the State to ensure, first, that the public has access through television and radio to (...) a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country”.²⁷

912. We would like to stress that, pursuant to Article 19 of the ICCPR, the public has the right to receive information as a corollary to the specific function of any journalist to impart information.²⁸

Article 11

In the Republic of Hungary, the public service media operates in order to preserve and strengthen integrity both on a national and European level, foster national, family, ethnic and religious communities, as well as promote and enrich national and minority languages and culture and meet the needs of citizens for information and culture.

913. In our view, this article, in conjunction with other provisions in the law, namely article 20(5) and article 17, may lead to propagating the idea that abstract or subjective notions or concepts, such as the State, national symbols, national identity, cultures, religions, ideologies or political doctrines be protected as such. The rigorous protection of religions as such may create an atmosphere of intolerance and can give rise to fear or even provoke the chances of a backlash.²⁹ International human rights law protects individuals and groups of people, but not abstract notions or institutions that are subject to scrutiny, comment, criticism or ridicule.³⁰

914. In justification of the present language in Article 11, your Government refers to Recommendation CM/Rec(2007)3 of the Committee of Ministers of the Council of Europe on the remit of public service media in the information society and the resolution of the 4th Council of Europe ministerial conference on mass media (“Prague Resolution”), which stressed the necessity of promoting intercultural and inter-religious dialogue. In our view, this does not mean that media legislation in any given country must specifically restrict the role of the media as currently prescribed in Article 11. We believe that in any democratic society, media must be free to decide on its content and role to be pursued.

²⁷ ECtHR, *Manole et al. v. Moldova*, Judgment of 17 September 2009, App. No. 13936/02.

²⁸ HRCtee, *Mavlonov et al. v. Uzbekistan*, Communication No. 1334/2004, UN Doc. CCPR/C/95/D/1334/2004.

²⁹ UN Doc. A/HRC/2/3, para. 42.

³⁰ UN Doc. A/HRC/14/23, para. 84 and UN Doc. A/HRC/2/3, paras. 27, 36 and 38.

Article 13 [as amended]

(1) The media content providers as a whole shall have the task to provide authentic, rapid and accurate information on local, national and EU public affairs and on the events that bear relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation.

(2) Linear and on-demand media services engaged in the provision of information shall provide comprehensive, factual, up-to-date, objective and balanced coverage on local, national and European issues that may be of interest for the general public and on any event bearing relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation. The detailed rules of this obligation shall be set by act in accordance with the requirements of proportionality and a democratic public opinion.

915. This provision imposes an overly strict obligation. Authorities may determine what qualifies as an objective and balanced coverage. In Your Government's response to our letter dated 18 February 2011, it was stated that this provision is a declarative one, indicating that the totality of the Hungarian media system shall provide adequate information to citizens. In the response, it was noted that that this provision did not provide for any legally enforceable obligation for each and every media content provider.

916. With regard to the issue of balanced and objective presentation of the news, Your Government emphasized that this was not a legal requirement for the print media or Internet news providers under the present Hungarian legislation. According to the information received from your Government, Article 13(2) of the Press and Media Act is applicable only to radio, television and television-like media content, i.e. non-linear audiovisual media services, within the meaning of the corresponding EU directive. In the event of a violation of this obligation, the only "sanction" applicable by the authorities was the obligation to make viewers/listeners aware that they had received biased or inaccurate information, or the obligation to remedy biases and/or inaccuracies in the presentation. Your Government also made reference to recital 102 of the Directive 2010/13/EU of the European Parliament and of the Council explicitly referring to the common practice of imposing the obligation on television broadcasters to present facts and events fairly. While this is the case, such guidelines are part of the policy objectives which are not suitable as stringent legal requirements. For purposes of Article 19(3) of the ICCPR, a norm, to be characterised as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.³¹ We consider that the reference to balanced coverage in accordance with the requirements of proportionality and democratic public opinion only adds to the vagueness of the law and ensuing sanctions contained therein.

917. Your Government has also indicated that the requirement of balanced presentation had been in existence in the Hungarian legislation since 1996. The requirement was supported by the decisions of the Hungarian Constitutional Court; its precise content had been developed over the 15-year lifespan of the former media authority, and in the Hungarian courts. Your Government stressed that courts performing judicial review concerning the related activities of the media authority were bound by this substantial body of constitutional jurisprudence – just as the authority itself. Given the fact that the precise content of the said requirement was well defined in case law, Your Government stated that media content providers are not facing a new, "overly broad" or "vague" concept, the

³¹ HRCtee, *Leonardus J. M. de Groot v. The Netherlands*, Communication No. 578/1994, UN Doc. CCPR/C/54/D/578/1994.

application of which may produce a “chilling effect” on them. “A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.³²

918. With respect to your Government’s comments, in our view, it remains unclear how the legal requirements for the media to provide “comprehensive, factual, up-to-date, objective, and balanced coverage” are necessary for achieving one of the aims set out in article 19(3) of the ICCPR. The severity of these obligations may have a negative impact on the effective freedom and diversity of views expressed by media.

919. Similar uncertainties remain with regard to conformity of requirements set out in this provision vis-à-vis Article 10(1) of the ECHR, which not only extends its protection to information, ideas and opinions which are favourably received or regarded as inoffensive or as a matter of indifference, “but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no ‘democratic society’”.³³

920. Pursuant to your Government’s agreement with the European Commission, on-demand audiovisual media is now exempted from the tasks prescribed under article 13(2), while it is still subject to those prescribed in article 13(1). Although it would seem that the requirement of “balanced” reporting is no longer applicable to blogs, it is still applicable to audiovisual media as well as Internet linear content providers.

921. If the requirement of proportionality is to be kept, we would like to remind your Government that it involves the assessment of the restriction in terms of severity and intensity vis-à-vis the purpose being sought and it should under no circumstances become the rule. The HRCtee, when applying the proportionality test of Article 19(3) of the ICCPR in individual cases, regularly refers to the freedoms of expression and information as cornerstones in any free and democratic society.³⁴ In its General Comment No. 27, the HRCtee observed that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected (...) The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law”.³⁵

922. The principle of proportionality must also take account of the form of expression at issue. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in democratic society concerning figures in the public and political domain.³⁶

³² HRCtee, Draft General Comment No. 34, UN Doc. CCPR/C/GC/34/CRP.5, para. 26. See also, General Comment No. 27, UN Doc. CCPR/C/21/Rev.1/Add.9.

³³ ECtHR, *Handyside v. the United Kingdom*, Judgment of 7 December 1976, App. No. 5493/72, para. 49.

³⁴ See HRCtee, *Adimaya M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, Communications No. 422-424/1990, UN Doc. CCPR/C/51/D/422-424/1990, para. 7.4; *Tae Hoon Park v. Republic of Korea*, Communication No. 628/1995, UN Doc. CCPR/C/64/D/628/1995, para. 10.3; *Robert W. Gauthier v. Canada*, Communication No. 633/1995, UN Doc. CCPR/C/65/D/633/1995, paras. 13.4-13.5.

³⁵ HRCtee, General Comment No. 27, CCPR/C/21/Rev.1/Add.9, para. 14. See also, HRCtee, *Marques de Morais v. Angola*, Communication No. 1128/2002, UN Doc. CCPR/C/83/D/1128/2002; *Coleman v. Australia*, Communication No. 1157/2003, UN Doc. CCPR/C/87/D/1157/2003.

³⁶ HRCtee, Draft General Comment No. 34, CCPR/C/GC/34/CRP.5, para. 35. See HRCtee, *Bodrožić v. Serbia and Montenegro*, Communication No. 1180/2003, UN Doc. CCPR/C/85/D/1180/2003.

923. In light of a number of issues raised with regard to this provision, we recommend that Article 13 be deleted altogether.

Article 14

(1) The media content provider shall – in the media content that it publishes and while preparing such media content – respect human dignity.

(2) No self-gratifying and detrimental coverage of persons in humiliating or defenceless situations is allowed in the media content.

924. This article emphasizes the need of the media content to respect human dignity. In this respect it prohibits self-gratifying and detrimental coverage of persons in humiliating or defenceless situations. We are concerned that such terms are unclear and vague, and would need further elaboration with regard to how such requirement constitutes one of the legitimate aims set out in article 19(3).

925. In response to the argument that human dignity may serve as an unjustified limitation on the right of freedom of expression, Your Government has stressed that such a notion was well-defined in the Hungarian legal system, with a number of interpretative decisions by the Hungarian Constitutional Court, the former media authority and the Hungarian courts. Moreover, human dignity was explicitly referred to in the European audiovisual media legislation, particularly in the Directive on Audiovisual Media Services and in related recommendations by the European Parliament and the Council of Europe. The concept is also present in the jurisprudence of the ECtHR, for example in the case C-377/98 *the Netherlands v. the European Parliament and the Council* (ECR 2001, p. I-7079). As a consequence, the legal concept of “human dignity” had become instrumental in combating racism, xenophobia and hate speech in Europe. Therefore, Your Government has maintained that its use in the Hungarian legislation is an important safeguard of democratic values and in no way an unjustified restriction on freedom of the press or freedom of expression.

926. Regarding the reference in Article 14(2) to “self-gratifying and detrimental coverage of persons in humiliating or defenceless situation”, your Government has noted that a well-established case law from the Hungarian courts – based on a decision by the Hungarian Constitutional Court – has clearly defined the limits and the scope of criticism that holders of public office must tolerate. The approach taken by the Constitutional Court and by the courts of Hungary was consistent with the Council of Europe declaration adopted by the Committee of Ministers on 12 February 2004 at the 872nd meeting of the Ministers’ Deputies on “freedom of political debate in the media”. In line with this declaration, the Hungarian legislation continued to fulfil the requirement that “political figures and public officials should only have access to those legal remedies against the media which private individuals have in case of violations of their rights by the media”. Your Government has noted that the exclusion of those holding public office from any form of legal remedy in the event of the violation of their dignity seemed to be a requirement going beyond what was necessary to ensure the possibility of public scrutiny.

927. Despite the above clarifications provided by your Government, we are concerned that this provision could be subject to differing interpretations and abuse. In particular, we would like to reiterate that public officials and authorities should tolerate more criticism, including those that may be offensive or humiliating, because of the nature of their mandate, since public office entails public scrutiny as part of checks and balances in any democratic society.³⁷

³⁷ UN Doc. E/CN.4/2006/55, para. 55.

Article 17

(1) The media content may not incite hatred against persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups.

(2) The media content may not [offend or] discriminate [neither directly nor in an implied manner,] persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups.

928. According to the response received from your Government, the purpose of Article 17 is to provide the opportunity for effective legal remedies when addressing problems related to racism, xenophobia or anti-Semitism, thereby helping to prevent the development of a climate of intolerance. Hence, the article sought to combat all ideologies, policies and practices characterized by incitement to racial hatred, violence and discrimination, as well as any action or language likely to strengthen fears and tensions between groups from different racial, ethnic, national, religious or social backgrounds.

929. Despite the clarification provided by your Government and the changes made in Article 17 of the Press and Media Act, we are still concerned that its wording continues to be overly broad and seems to protect “any church or religious group” *per se*. We have stated on many occasions that abstract or subjective notions or concepts, such as the State, national symbols, national identity, cultures, schools of thought, religions, ideologies or political doctrines should not be protected as such. Otherwise, the rigorous protection of religions as such may create an atmosphere of intolerance and can give rise to fear and may even provoke the chances of a backlash.³⁸ We would like to reiterate that international human rights law protects individuals and groups of people, but not abstract notions or institutions that are subject to scrutiny, comment, criticism or ridicule.³⁹ The principle that individuals rather than religions *per se* are the rights-holders was also recently reiterated during the 16th session of the Human Rights Council through its resolutions on “freedom of religion or belief”⁴⁰ and on “combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief”.⁴¹

930. The Camden Principles on Freedom of Expression and Equality⁴² provide useful guidance for the interpretation of international law and standards, inter alia with regard to incitement to hatred. We have highlighted Principle 12 which clarifies that the terms *hatred* and *hostility* refer to “intense and irrational emotions of opprobrium, enmity and detestation towards the target group”, that the term *advocacy* is to be understood as “requiring an intention to promote hatred publicly towards the target group” and that the term *incitement* refers to “statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups”.

931. We express concerns that the powers of the Media Council may arbitrarily extend the interpretation of offences of inciting hatred or discrimination as provided in the Criminal Code. Similarly, there is little justification for referring in the same provision to majorities or churches which already benefit from an extensive protection in the country.

932. We recommend that Article 17 be brought in line with international human rights standards, including with article 20 of the ICCPR (which prohibits any advocacy of

³⁸ See UN Doc. A/HRC/2/3, para. 42.

³⁹ See UN Doc. A/HRC/14/23, para. 84 and UN Doc. A/HRC/2/3, paras. 27, 36 and 38.

⁴⁰ See UN Doc. A/HRC/16/L.14, adopted without a vote on 24 March 2011.

⁴¹ See UN Doc. A/HRC/16/L.38, adopted without a vote on 24 March 2011.

⁴² See <http://www.article19.org/advocacy/campaigns/camden-principles>.

national, racial or religious hatred that constitutes incitement to hostility, discrimination or violence).

933. We also express concerns that the powers of the Media Council may arbitrarily extend the interpretation of offences of inciting hatred or discrimination as provided in the Criminal Code. Similarly, there is little justification for referring in the same provision to majorities or churches which already benefit from an extensive protection in the country.

IV. Article by Article Commentary on The Media Law

934. The present section of the memorandum provides a commentary on those articles of the Media Law, which we find most problematic in terms of their compliance with international human rights norms and standards. For ease of reference, each comment is preceded by relevant extracts from the law. The amended provisions, as adopted on 7 March 2011 by the Parliament of Hungary, are already taken into account (deletions appear in brackets and strikethrough, while additions are underscored).

Article 12

(...)

(2) Subject to the nature of the programme the balanced nature of the communication shall be ensured within the given programme or in a series of programmes in the case of programmes appearing regularly.

(...)

935. Under Article 12(2), reference is made to the requirement of the “balanced nature of the communication”. While it is true that such a requirement was already part of the former Media Law in Hungary, under that law there was no authority entitled to investigate violations and no sanctions were foreseen. Under the current legislation, media responsible for an allegedly “unbalanced” reporting are subject to burdensome proceedings as prescribed by the Media Authority.

Article 14

The viewers or listeners shall be given a forewarning prior to broadcasting any image or sound effects that may potentially infringe a person’s religion, faith related or other philosophical convictions or which are violent or otherwise disturbing.

936. We find this provision to be troublesome and overly broad, with terms such as “philosophical convictions” or “otherwise disturbing”. It is extremely difficult to see how it can be implemented without bringing in subjective views.

Article 15

During a state of distress, state of emergency or state of extreme danger (...) the Parliament, the Defence Council, the President of the Republic and the Government, as well as the persons and organizations defined in other acts may order the media service provider to the extent necessary to publish, free of charge, any public service announcements in connection with the existing state of affairs or situation in the prescribed form and time, or may prohibit the publication of certain announcements or programmes. (...)

937. We find that the terms “state of distress”, “state of emergency” and “state of extreme danger” are overly broad and may serve as a justification for disproportionate interferences with the right to freedom of expression.

Article 16

(...)

(2) The Media Council shall designate for the purposes of the audiovisual media service providers defined in paragraph (1), the events of considerable importance to society in an administrative resolution subsequent to a public hearing. In this resolution the Media Council shall also establish whether the events of considerable importance to society should be broadcast live or subsequently. In the course of adopting the resolution it should also be given consideration that a wide range of viewers should show interest in the event classified as one of considerable importance, and that the event should be a world- or Europe-wide event, or one with Hungarian significance, which, save for events exclusively of Hungarian significance, is aired in a significant number of European countries.

(...)

938. In our view, this article is excessively prescriptive and effectively undermines the independence of media in selecting content of its services. There is no justification for the media to avoid transmitting live certain events, which are concurrently transmitted on other European channels.

Article 22

(1) The rules stipulated in Articles 20 and 21 shall not apply to (...)

(c) the media service which broadcasts its service exclusively in a language different from that of the Member States of the European Union; where programmes are broadcasted in this language or languages most of the time, the rules shall not be applicable to the given part of programme time;

(...)

939. We believe that the above provision amounts to an unjustified discrimination against media services provided in one of the official languages of the European Union.

Article 24

(1) The commercial communication broadcasted in the media service

(a) may not infringe upon human dignity;

(b) may not contain and may not support discrimination on grounds of gender, racial or ethnic origin, nationality, religion or philosophical conviction, physical or mental disability, age or sexual orientation;

(c) may not directly invite minors to purchase or rent a certain product or to use a service;

(d) may not directly call on minors to persuade their parents or others to purchase the advertised goods or to use the advertised services;

(e) may not exploit on the special trust minors towards their parents, teachers or other persons or the inexperience of and credulity of minors;

(f) may not unreasonably show minors in dangerous situations;

(g) may not express religious, conscientious or philosophical convictions except for commercial communications broadcasted in thematic media services concerning a religious topic;

(h) may not infringe upon the dignity of a national symbol or a religious conviction.

(...)

940. We recommend that broad formulations, such as commercial communication that “may not infringe upon human dignity”, be deleted.

941. The provision in Article 24(1)(g) in the Media Law provides that commercial communication broadcasted in the media service “(g) may not express religious, conscientious or philosophical convictions except for commercial communications broadcasted in thematic media services concerning a religious topic”; this overly broad formulation may constitute an undue limitation both on freedom of religion or belief and on the freedom of expression.

Article 41 [as amended]

(2) On-demand and ancillary media services [subject to this Act provided by a media service provider with a registered office (domicile) on the territory of the Republic of Hungary shall be registered with the Authority. The said shall also be applicable to a media product published by a publisher with a registered office (domicile) on the territory of the Republic of Hungary] provided by media service providers established in the Republic of Hungary under the scope of this Act shall be notified to the Authority for registration within 60 days following the commencement of the service or activity. The registration is not a condition for taking up a service or activity.

(...)

942. Registration must be completed not prior but in the first 60 days of operation of the outlets. This transforms the permissive type of registration into a notifying one. Nevertheless, we believe that the requirement of registration is problematic (please refer to the commentary on Article 46 of the Media Law). The current wording of the provision still provides the Media Authority with the power to stop the media service or activity upon the expiry of the 60-day period.

943. We are concerned that the mandatory registration requirement still remains an absolute condition for providing media services. The amendment introduced by the Parliament only postpones the date of registration by up to 60 days, but the mandatory obligation remains unchanged (please refer to commentary of Article 46 of the Media Law).

Article 42

(7) The Authority shall cancel the linear media service provision from the register in the event that

(...)

f) the Media Council has, in consequence of the media service provider’s repeated severe violation of the law, decreed said legal sanction with due consideration of those set forth in Articles 185-187.

944. We recommend that para. 7(f) be deleted from the list of conditions under which the Media Authority can cancel the linear media service provision from the register. While administrative sanctions may remain within the mandate of the Media Council, we are convinced that any sanction for repeated severe violations of the law, which could possibly entail suspension of the linear media provider, should be adjudicated by an independent judicial body.

945. In *Findlay v. United Kingdom*, the ECtHR stated that “in order to establish whether a tribunal can be considered as ‘independent’, regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of guarantees against

outside pressures and the question whether the body presents an appearance of independence (...).⁴³The Court continued as follows: “[a]s to the question of ‘impartiality’, there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect (...) The concepts of independence and objective impartiality are closely linked (...)”.⁴⁴

946. Similarly, in defining the impartiality and independence of courts, the United Nations Human Rights Committee takes into account “the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office”.⁴⁵

947. We believe that the above analysis is instructive in assessing the independence and impartiality of the Media Authority in the Republic of Hungary.

Article 45 [as amended]

(1) The registration of on-demand media services may be initiated by the [future] media service provider thereof. The notification to the Authority of the on-demand media service shall include:

(3) The Authority shall [issue a regulatory decision on the registration] register [of] the on-demand media service within thirty days. [In the event that the Authority fails to adopt such regulatory decision within thirty days, the notification shall be deemed as registered.]

(4) The Authority shall withdraw the registration [may be denied only] if

- a) a conflict of interests exists vis-à-vis the notifier,
- [b) the notification failed to provide, even after notice to rectify deficiency, the requisite data set forth under Paragraph (1),]
- c) the designation of the notified media service is identical with – or is confusingly similar to - the designation of an on-demand media service registered earlier, with valid records at the time of notification, or
- [d) the notifier failed to pay the administrative service fee.]

(5) The Authority shall delete the on-demand media service from the register, if

- a) the [refusal] withdrawal of registration could be applied under paragraph (4),
- b) the media service provider requested deletion from the register,
- c) the media service provision is not commenced for one year after registration, or the commenced service provision is interrupted for over a year, or
- d) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through via the media service provider’s name and barred the infringer from further violation of the law.

(6) The media service provider of on-demand media services shall notify any changes in registered data to the Authority within fifteen days.

(7) In the event of a change in the media service provider’s person or the data of the media service set forth in Paragraph (1) (d), the media service provider originally

⁴³ ECtHR, *Findlay v. United Kingdom*, Judgment of 25 February 1997, App. No. 22107/93, para. 73

⁴⁴ *Ibid.*

⁴⁵ HRCtee, General Comment No. 13, UN Doc. HRI/GEN/1/Rev.1, p. 14, para. 3.

making the notification shall initiate modification of the data on record. The provisions laid down in Paragraphs (1) to (4) shall be applied *mutatis mutandis* to this procedure.

(8) In the event the media service provider fails to comply with its obligations related to registration, the Authority may impose a fine up to one million forints, taking into consideration the principles set forth in Article 185(2).

948. Please refer to the commentary below on Article 46.

Article 46

(1) Registration of a press product may be initiated by its [future] publisher. In the event that the founder and publisher of a media product are different persons or undertakings, they shall incorporate their responsibilities and rights vis-à-vis the media product in an agreement.

(...)

(4) The Authority shall [issue a regulatory decision on the registration] register [of] the press product within fifteen days. [In the event that the Authority fails to adopt such a decision within fifteen days, the press product shall be deemed as registered].

(5) The Authority shall withdraw the registration [may be only refused] if

a) a conflict of interests exists vis-à-vis the notifier,

[b) the notification failed to provide, even after notice to rectify deficiency, the requisite data set forth under Paragraph (1),]

c) the name of the notified press product is identical with – or is confusingly similar to – the name of a press product registered earlier with valid records at the time said application was submitted, or

[d) the notifier failed to pay the administrative service fee]

(6) The press product shall be deleted from the register, if

a) the [refusal] withdrawal of registration could be applied under paragraph (5)

b) the founder or – if founder and publisher are different undertakings, with the approval of the founder – the publisher requested deletion from the register,

c) publication of the press product is not commenced within two years from the date of registration, or ongoing publication is interrupted for over five years, or

d) a final decision by the court has decreed cessation of trade mark infringement perpetrated through the title of the press product and barred the infringer from further trade mark infringement.

(7) The publisher and founder of a press product shall notify the Authority about any changes in their data on record within fifteen days.

(8) In the event of a change in the publisher's person, the publisher on record shall initiate modification of the registered data. In the absence thereof, the founder may also initiate the modification. Paragraphs (1) to (5) shall be applied *mutatis mutandis* to such procedure.

(8a) In the event the publisher or founder of a press product fails to comply with its obligations related to registration, the Authority may impose a fine up to one million forints, taking into consideration the principles set forth in Article 185(2).

949. Art. 10(1) of the ECHR allows States to establish licensing procedures for audio-visual broadcasters, television and cinema enterprises. However, there is no reference in the Convention to mandatory registration of the printed press, which in the ECtHR's case-law has been intentionally accorded a broader scope of protection.

950. In *Gaweda v. Poland*, the ECtHR noted that “although Article 10 of the Convention does not in terms prohibit the imposition of prior restraints on publications (...) the relevant law must provide a clear indication of the circumstances when such restraints are permissible and, a fortiori, when the consequences of the restraint are to block publication of a periodical completely (...) This is so because of the potential threat that such prior restraints, by their very nature, pose to the freedom of expression guaranteed by Article 10”.⁴⁶ In that case, the Court dealt with the case where Polish authorities refused to register two periodicals on the grounds that the publications were “inconsistent with the real state of affairs”.

951. In its para. 8.15, the Council of Europe Parliamentary Assembly's Resolution 1636 (2008) on indicators for media in a democracy provides that print media and Internet-based media should not be required to possess a State licence, other than a mere business or tax registration document. We share the view of the Council of Europe Commissioner for Human Rights that print media and Internet-based media should not be subject to any registration requirements.

952. In its draft General Comment No. 34, the United Nations Human Rights Committee stressed that States parties to the ICCPR must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations.⁴⁷ The criteria for the application of such conditions and license fees should be reasonable and objective,⁴⁸ clear,⁴⁹ transparent,⁵⁰ non-discriminatory and otherwise in compliance with the ICCPR.⁵¹ For example, reference in Article 46(5)(a) to “a conflict of interest” does not meet the aforementioned requirements.

953. In *Mavlonov and Sa'di v. Uzbekistan*, the United Nations HRCtee found that “the application of the procedure of registration and re-registration (...) did not allow Mr. Mavlonov, as the editor, and Mr. Sa'di, as a reader, to practice their freedom of expression, as defined in article 19, paragraph 2 [of the ICCPR]”.⁵² The Committee noted that “the public has a right to receive information as a corollary of the specific function of a journalist and/or editor to impart information.”⁵³

954. Article 45(8) and Article 46(8)(a) further confirm our concerns with regard to the unsatisfactory amendment introduced with regard to the registration requirement. The present provisions provide for an additional form of pecuniary sanction (up to one million

⁴⁶ ECtHR, *Gaweda v. Poland*, Judgment of 14 March 2002, App. No. 26229/95, para. 40.

⁴⁷ HRCtee, Draft General Comment No. 34, UN Doc. CCPR/C/21/Rev.1/Add.9, para. 41. See also, HRCtee, Concluding Observations on Gambia, UN Doc. CCPR/CO/75/GMB.

⁴⁸ HRCtee, Concluding Observations on Lebanon, UN Doc. CCPR/CO/79/Add.78.

⁴⁹ HRCtee, Concluding Observations on Kuwait, UN Doc. CCPR/CO/69/KWT; Concluding Observation on Ukraine, UN Doc. CCPR/CO/73/UKR.

⁵⁰ HRCtee, Concluding Observations on Kyrgyzstan, UN Doc. CCPR/CO/69/KGZ.

⁵¹ HRCtee, Concluding Observations on Ukraine, UN Doc. CCPR/CO/73/UKR.

⁵² HRCtee, *Mavlonov and Sa'di v. Uzbekistan*, CCPR/C/95/D/1334/2004, para. 8.4.

⁵³ *Ibid.*

HUF, approx. 5000 Euros) for those media service providers who violate the rules of the registration.

Article 55

(1) Companies that

(...)

c) in regard to which no final public administration ruling has established a gross breach of obligations stemming from a broadcasting or an official contract undertaken on the basis of a previous tender procedure closed no later than five years, and the broadcasting or official contract of which has not been terminated may take part in the tender procedure.

(...)

955. The provision contained in Article 55(1)(c) gives the authorities the discretion to exercise undue influence on the media service provider, which while accountable to an administrative regulatory mechanism, may be prevented from freely publishing or broadcasting content critical of the Government. For example, we are concerned that the Media Council can exclude any company from participating in tenders for licenses if, in the last five years, a media outlet owned by the company has been reprimanded by the same Media Council for a “gross” or “grave” violation. Article 55(2) adds that the same rationale is applicable to any company that has a controlling stake or may be part of such a stake. A similar rationale is applicable to the Television programmes (see Article 187(3)(e)).

Article 70

(...)

(2) In order to clarify the relevant facts and circumstances, the Media Council may require media service providers to disclose data in its administrative verification proceedings by way of a final decision. No independent legal remedy may be claimed against the final decision; the final decision may be contested in the legal remedy following the administrative verification brought against the material decision made in the procedure aimed at the prevention of media market concentration and at determining media service providers with substantial influence. The final decision may be challenged in a legal remedy procedure brought against the decision of substance made in a procedure that follows the authority supervision and is aimed at the prevention of media market concentration and at determining media service providers with substantial influence.

(...)

956. We are concerned that sanctioned media service providers with substantial influence do not have an effective right to appeal and review by a judicial body. In addition, they do not seem to be allowed to appeal on the merits. Their appeal can only be considered if the Media Council is claimed to have violated the Media Law, for example, for non-compliance with deadlines, violating rules of procedure, etc. For instance, sanctioned media service providers seem to be unable to contest the amount of the fine imposed, as the Media Council has unrestricted power to define whether an alleged violation by media service provider was a ‘light’ or a ‘grave’ one in accordance with Article 187.

Article 102

(1) Public service broadcasters are headed by a general director, they do not have a Board of Directors. The general director shall – within the scope of this Act – exercise all those powers, which the Act on Business Associations confers upon the Board of Directors of a company limited by shares. A work contract must be

executed with the general director, and his or her remuneration must be defined as a fixed monthly sum payable by the public service broadcaster under his or her management.

(2) The Board of Trustees is vested with employer's rights in relation to the general directors of public service broadcasters, which includes the appointment of general directors and the termination of their employment. General directors are nominated and appointed in the following step-by-step order:

a) the chairperson of the Media Council proposes two general directors to the Media Council in relation to each public service broadcaster,

b) if the Media Council approves of these candidates, then it shall submit the nominations to the Board of Trustees, asking it to select one of the candidates,

c) if the Media Council does not approve of either of the candidates proposed by the chairperson of the Media Council, then the chairperson of the Media Council shall propose a new candidate. The Media Council may nominate a candidate to the Board of Trustees only if it had already approved two candidates,

d) the Media Council may also propose certain substantive elements to be included in the general director's work contract,

e) during the first round of voting, members of the Board of Trustees – including its chairperson – shall come to a decision concerning the appointment of the general director with a two-thirds majority of votes,

f) if the Board of Trustees fails to make a selection with a two-thirds majority of votes from the two candidates nominated by the Media Council within thirty days from the date when they were nominated, then a new nomination procedure must be carried out,

g) in the course of the new nomination, two new candidates must be proposed per public service broadcaster,

h) during the vote taking place after a new nomination, all members of the Board of Trustees – including its chairperson – shall come to a decision concerning the appointment of the general director with a simple majority of votes.

(...)

957. According to Recommendation No. R(96) 10 of the Committee of Ministers of the Council of Europe, “[t]he rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference”. Similarly, the guidelines provide that “[t]he legal framework governing public service broadcasting organisations should stipulate that their boards of management are solely responsible for the day-to-day operation of their organisation”. Hence, it clarifies that interference in the day-to-day management of the activities of public service broadcasting organizations is prohibited not only for all authorities outside the organizations but also for their own supervisory bodies.

958. Article 102(2) provides that the Prime-Minister-appointed President of the Authority, who is also the President of the Media Council, is the only person who has a right to propose candidates for senior management posts of public service broadcasters. The other members of the Media Council can approve or reject the proposals. The Board of Trustees can select among two candidates.

959. We are concerned that the head of the Media Council is the only person in the system entitled to appoint the CEOs of the four existing media outlets (MTV; Hungarian

Radio; Danube TV; Hungarian News Agency), who is not required to follow any criteria or public procedure. In other words, all public service broadcasting newsmakers are composed of the employees of a Fund established under the Media Council (please refer to Chapter V of the Media Law). We support the view of the Commissioner for Human Rights of the Council of Europe that such an arrangement in the law “is not reconcilable with Council of Europe standards aimed at preserving the independence, especially editorial, of the public service broadcasting from interference, notably political, from any external authority.

Article 109 – Article 111

960. Compliance with the provisions set out in the new media legislation is overseen by the Media Authority, consisting of three entities which are indicated in article 109: (a) the President of the Authority, who is appointed by the Prime Minister of Hungary for a period of nine years; (b) a Media Council of the Authority, whose members are appointed by two thirds of the members of the Parliament for a period of nine years; and a Bureau of the Authority, headed by a Director-General who is appointed by the President of the Authority.

961. In its response to our concerns, Your Government noted that the Media Council is comprised of professionals elected by a two-thirds majority in the Hungarian National Assembly and hence can in no way be regarded as political appointees.

962. In any event, the period of nine years should be reduced in our view. It is the longest known term of office for members of equivalents of broadcasting regulatory authorities in Europe. For instance, according to a Council of Europe 2003 study “An overview of the rules governing broadcasting regulatory authorities in Europe”, terms of office range between 4 and 6 years (7 years in the case of Italy), with the possibility of re-election limited in most cases.⁵⁴

Article 123 – Article 125

963. In accordance with Recommendation Rec(2000)23 on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, the Council of Europe Committee of Ministers set out detailed prerequisites for the rules regarding the membership and functioning of media regulatory authorities:

“II. Appointment, composition and functioning

3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.

4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:

- regulatory authorities are under the influence of political power;
- members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.

⁵⁴ Council of Europe, “An overview of the rules governing broadcasting regulatory authorities in Europe”, DH-MM(2003)007. See also OSCE, “Analysis and Assessment of a Package of Hungarian Legislation and Draft Legislation on Media and Telecommunications”, prepared by Dr. Karol Jakubowicz, Warsaw, Poland, September 2010, pp. 41-42.

5. Furthermore, rules should guarantee that the members of these authorities:

- are appointed in a democratic and transparent manner;
- may not receive any mandate or take any instructions from any person or body;
- do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.

6. Finally, precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure”.⁵⁵

964. In their current form, the provisions regarding the appointment, composition and tenure of the media regulatory bodies would, in our view, require amendments to comply with the requirements of independence and impartiality (please refer to our comments above concerning Article 42).

Article 139 – Article 143

965. Through the services of a “Media Commissioner”, the Authority and Media Council have the right to request any information at any time from any media outlet in the country, without any violation of law having been committed by the media outlet on the grounds, that it “is or may be suitable for causing a harm to the equitable interests of users, subscribers, viewers, listeners, consumers resorting to media services and media products and electronic communications services” (Art. 140(1)). The Media Commissioner may also act *ex officio* (Art. 140(2)).

966. In accordance with Article 142(1), no business/trade secrets or otherwise protected data constitute an exception to investigating powers of the Media Commissioner, as defined in Article 140. In our view, the Media Commissioner is granted with extensive powers which are susceptible to abuse.

Article 163 – Article 166

967. The provisions on the available legal remedies are particularly problematic from the perspective of international and European legal norms.

968. Article 10 of the Universal Declaration of Human Rights provides that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations (...)”. Article 6 of the ECHR requires in particular that there must always exist the possibility of judicial review by an independent and impartial tribunal in instances where administrative decisions have affected a person’s civil rights and obligations.

969. In *Leander v. Sweden*, the ECtHR noted that “Article 13 guarantees the availability of a remedy at national level to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order (...) The effect of Article 13 is thus to require the provision of a domestic remedy allowing the competent ‘national authority’ both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see, inter alia, the *Silver* judgment of 25 March 1983, Series A No 61, p 42, § 113(a))”.⁵⁶ No effective remedy can be envisaged without possibility of review of the merits or a limited possibility to conduct such reviews, which

⁵⁵ Recommendation Rec(2000)23 of the Committee of Ministers to member states, 20 December 2000.

⁵⁶ ECtHR, *Leander v. Sweden*, Judgment of 26 March 1987, App. No. 9248/81, para. 120.

would impair a proper examination regarding the existence of a violation of the Convention.

970. In *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, the applicants complained, under Article 13 in conjunction with Article 10, about the refusal by the Supreme Administrative Court to review the merits of a decision by the national Radio and Television Committee (NRTC) to deny a radio broadcasting license.⁵⁷ The ECtHR found a violation of Article 13 ECHR, noting that the Supreme Administrative Court's scope of review fell short of the substantive and procedural scrutiny required.

971. Article 163(1) suggests that any official decision of the Media Council passed in its capacity as Authority of the first instance, for example in fining a media service provider, may only be appealed to an administrative court whose scope of review is limited to examining the conformity with the media legislation itself. At the same time Article 164(3) provides that "the court shall have the powers to alter the decision passed by the Media Council", without specifying the nature of the decision. On the face of the law, it is not clear to us whether the administrative court has the competence to review the merits of the decisions taken by the Media Council and examine their conformity with international and European standards.

Article 176 [as amended]

(1) When the linear audiovisual media service of a media service provider established in another Member State is aimed at the territory of the Republic of Hungary, the Media Council shall have the right to apply, solely as regards the retransmission of the said service within the territory of the Republic of Hungary, the legal consequences as defined in Article 187(3)(b)(c)–(d) against the media service provider under its decision for the period of the infringement but up to 180 days at the most when the following conditions are in existence:

(a) the media service clearly and materially violates Article 17(1), 19(1) or 19(4) of the Press and Media Act or Article 9 or 10(1)–(3) of this Act,

Article 177 [as amended]

(1) When the on-demand audiovisual media service of a media service provider established in another Member State is aimed at, is broadcast or published in the territory of the Republic of Hungary, the Media Council shall have the right to apply, solely as regards the transmission of the said service within the territory of the Republic of Hungary, the legal consequences as defined in Article 187(3)[(b)](c)–(d) against the media service provider under its decision for the period of the infringement but up to 180 days at the most when the following conditions are in existence (...)

A new title inserted before Article. 179(4)

"Proceedings against a media content provider resident in another Member State in case of circumvention of the law"

972. Notwithstanding the amendments adopted by the Parliament of Hungary, we remain concerned that in accordance with Article 178, the Media Authority retains the power to launch procedures against linear radio services, online and printed medial products. According to the EU Audiovisual Directive, "notwithstanding the application of the country of origin principle, Member States may still take measures that restrict freedom of

⁵⁷ ECtHR, *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, Judgment of 11 October 2007, App. No. 14134/02.

movement of television broadcasting, but only under the conditions and following the procedure laid down in this Directive”. We also raise our concerns regarding the conformity of Article 178(1)(a) with the requirements set forth in the aforementioned Directive, in particular given the unclear and broad language of that provision (“the protection of public order, the prevention, investigation and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, for the protection of minors, public health, public security, national security and consumers and investors”).

Article 181- Article 184

973. The Media Authority is entitled to sanction media service providers for coverage issues, in particular for failing to comply with the obligation of “balanced communication”. We believe that the procedure in case of infringement of such obligation as set forth in Article 181 is burdensome and may impose unnecessary restrictions on the freedom of media service providers.

Article 185 – Article 189

974. These provisions identify legal consequences that the Media Council is entitled to apply to media service providers for breaches of the act. They include suspension of a media service provider for up to one week in cases of repeated and grave infringements (article 187(3)), as well as imposition of overly high fines up to HUF 50,000,000 for a media service provider, HUF 25,000,000 for a newspaper with nationwide distribution, HUF 10,000,000 for a weekly periodical with nationwide distribution, HUF 5,000,000 for other newspapers or periodicals, HUF 25,000,000 for an online media product, HUF 5,000,000 for a broadcaster, and HUF 3,000,000 for an intermediary service provider.

975. In assessing the proportionality of such sanctions vis-à-vis the purposes sought, two elements must be taken into account (the nature and severity of the penalty imposed).⁵⁸ Similarly, no sanction can have the effect of discouraging the press from expressing criticism.⁵⁹ For instance, in *Ürper et al. v. Turkey*, the ECtHR held that the decision of the Turkish authorities to suspend the publication of several newspapers for periods of up to one month was based on an assumption that the applicants “would re-commit the same kind of offences in the future”. The Court held that the preventive effect of such suspension orders entailed implicit sanctions on the applicants, which had the effect of dissuading them from publishing similar articles or news reports in the future, thereby hindering their professional activities.⁶⁰ The Court also considered that alternative measures to suspension, such as the confiscation of particular issues of the newspapers or restriction on their publication of specific articles could meet the purpose of interference. Hence, it would seem that *a priori* Article 187(3)(d) runs counter the above interpretation by the ECtHR.

976. The amendments proposed by your Government following discussions with the European Commission do not include any reduction of overly high administrative fees. Your Government justified the provisions establishing the administrative penalties by stating that “a broadcaster with annual revenue of several tens of billions or even hundreds of millions of forints will not be affected by a fine to the tune of a few hundred thousand forints, which will not prevent it from repeating its infringing conduct and will not set a dissuasive example for other broadcasters”.⁶¹ However, in line with the jurisprudence of the

⁵⁸ ECtHR, *Sürek v. Turkey*, Judgment of 8 July 1999, App. No. 26682/95; *Chauvy et al. v. France*, Judgment of 29 June 2004, App. No. 64915/01.

⁵⁹ See e.g. ECtHR, *Dammann v. Switzerland*, Judgment of 25 April 2006, App. No. 77551/01.

⁶⁰ ECtHR, *Ürper et al. v. Turkey*, Judgment of 20 October 2009, App. No. 14526/07.

⁶¹ Reply of the Ministry of Justice and Administration to the Criticism of International Media Against

ECtHR, even relatively small fines could amount to censorship. In *Lingens v. Austria*, the Court held that “although the penalty imposed on the author did not strictly speaking prevent him from expressing himself, it nonetheless amounted to a kind of censure, which would be likely to discourage him from making criticisms of that kind again in the future”.⁶² The Court found that sentencing a journalist with a relatively small fine of 20,000 Austrian Schillings (1,430 EUR) “would be likely to deter journalists from contributing to public discussion of issues affecting the life of the community”. By the same token, a sanction such as this is liable to hamper the press in performing its task as purveyor of information and public watchdog”.⁶³

977. In our view, the amendments proposed do not respond to the core issue of independence and impartiality of the body applying similar sanctions. The deficiencies in terms of independence and impartiality relate both to the composition of the authority overseeing the violations of the media service providers and the appointment process. The President of the Authority is appointed by the Prime Minister, who is also empowered to appoint the Director-General of the Bureau. The members of the Media Council are appointed by two thirds of the members of Parliament, or the dominant political party. Further concern is expressed at the fact that the financial sanctions imposed for a violation of legislation related to the media are determined by the Authority rather than an independent judiciary.

978. As recommended in one of the studies commissioned by the OSCE, in order to achieve greater independence of the members of the Media Authority, we would like to invite your Government to identify alternative methods of considering candidates for membership so that their identification is “taken out of hands of the politicians” and the parliament “could only consider candidates recommendation by institutions of higher learning and appropriate professional, trade and civil society organizations”.⁶⁴

979. Moreover, in accordance with Article 187(3)(e), any Television programme may be excluded from distribution in the country. In practice, the licenses of the only two nationwide commercial analogue television channels (RTL Klub and TV2), will expire in 2012. The interest in renewing these licences will most likely lead to self-censorship of these television channels.

980. In general, we support the recommendation of the Commissioner for Human Rights of the Council of Europe to delete Article 187 in its entirety and make reference to the existing instruments in the Hungarian legal order concerning acts such as incitement to violence.⁶⁵

981. By virtue of Article 189, the Media Council can compel Internet service providers to block any Internet-based news outlet as a final sanction for alleged non-compliance with the Media legislation.

the Media Act, 3 January 2011, available at http://www.kormanysovivo.hu/news/show/news_3916?lang=en

⁶² ECtHR, *Lingens v. Austria*, Judgment of 8 July 1986, App. No. 9815/82, para. 44.

⁶³ *Ibid.*

⁶⁴ OSCE, “Analysis and Assessment of a Package of Hungarian Legislation and Draft Legislation on Media and Telecommunications”, prepared by Dr. Karol Jakubowicz, Warsaw, Poland, September 2010, p. 14.

⁶⁵ See Opinion of the Commissioner for Human Rights, “Hungary’s Media Legislation in Light of Council of Europe Standards on Freedom of the Media”, CommDH(2011)10, para. 22.

Article 203

982. This provision provides a definition of “Media Product”. It refers not only to the printed press, but also to Internet-based content. The wording suggests that the scope of the law encompasses not only news sites but also private websites that are financed by advertisements. Please refer to our comments on Article 1 of the Press and Media Act.

Article 220

983. In its paragraph 15, Article 220 postponed Hungary’s digital switchover from 31 December 2011, the Europe-wide deadline, to 31 December 2014. In practice, this amounts to barring Hungary from the diversity of channels and may have a chilling effect on the promotion and protection of media pluralism in the country. While the law had as its initial justification the openness of the country to new media markets and technology, it risks precluding the entry of new TV channels.

V. *Conclusions and Recommendations*

984. We believe that the media legislation, as adopted by the Parliament of Hungary, contains a number of serious deficiencies with respect to compliance with international human rights law and obligations. In this commentary, we have undertaken a general and non-exhaustive assessment on the principal issues that we believe merit close scrutiny from the perspective of our mandates.

985. In light of our analysis, we invite the Government of Hungary to consider either repealing or amending the current media legislation, taking into account the following recommendations:

- 1) Renew the process of elaboration of the legislation in a public consultative process that shall include members of the media associations, civil society and other stakeholders;
- 2) Delete any reference to the requirement of “objective and balanced coverage” of events;
- 3) Remove any registration requirement which remains a precondition for maintaining media services after the expiry of 60 days following the commencement of the service or activity;
- 4) Ensure the independence and impartiality of the Media Authority, and allow for effective participation of media associations, civil society and other stakeholders;
- 5) Limit the scope of the media legislation to the audio-visual sector only and encourage self-regulation of the print media and the Internet;
- 6) Remove or clearly define vague terms in the current media legislation, such as “public morals”, “human dignity”, “self-gratifying and detrimental coverage of persons in humiliating or defenceless situations”, “state of extreme danger” etc.;
- 7) Restore judicial review of the administrative decisions taken by the Media Authority, with appeals adjudicated not only on procedural grounds but also on the merits of the case;
- 8) Guarantee the protection of media sources and ensure that – with the exception of courts – no authority may request media to reveal the identity of the source;
- 9) Remove any excessive fines for infringements of the media laws which, in practice, may impair the functioning of media service providers and the full enjoyment of the right to freedom of opinion and expression;

10) Reconsider the imposition of any administrative sanctions that may lead to an environment of self-censorship and compromise media diversity in the Republic of Hungary.

986. We stand ready to further engage with your Government to ensure that any media legislation is in conformity with international human rights law.

Observations

987. The Special Rapporteur thanks the Government for the detailed response received on 2 February 2011 to his communication dated 18 January 2011 regarding the Hungarian media legislation. Furthermore, the Special Rapporteur expresses his appreciation for the invitation and facilitation of a technical mission, which was carried out from 3 to 5 April 2011, to address his concerns regarding the media laws.

988. However, as he has stated at the end of the mission in his press statement,⁶⁶ the Special Rapporteur remains concerned that the media laws still fall short of the required international benchmarks to which Hungary has committed itself. The Special Rapporteur looks forward to the implementation of his recommendations, including the holding of meaningful and public consultations with all stakeholders, including representatives of the media and civil society. Additionally, he hopes that the Government will also consider his recommendation to adopt a concrete plan of action to bring the media legislation into conformity with international human rights standards following open and transparent consultations with relevant stakeholders prior to the examination of the human rights situation in Hungary through the Universal Periodic Review on 11 May 2011.

989. The Special Rapporteur looks forward to continued engagement and dialogue with the Government to ensure that the media laws come into full conformity with international human rights norms and standards on the right to freedom of opinion and expression.

India

Allegation letter

990. On 13 July 2010, the Special Rapporteur sent an allegation letter concerning approximately **1,000 metric tonnes of newsprint material that are bound for Nepal, but are allegedly being held at Kolkata port in India by the Department of Revenue Intelligence.**

991. According to information received, the following shipments containing newsprint material arrived at Kolkata port: (1) on 27 May 2010, 11 containers from Canada (275 metric tonnes); (2) on 29 May, 19 containers from the Republic of Korea (475 metric tonnes); (3) 12 June, 9 containers from Canada (228 metric tonnes). These shipments were imported by Kantipur Publications based in Nepal, but have reportedly been seized by the Department of Revenue Intelligence of India since their arrival. While it has been alleged that the shipments are being held on the basis that the materials need to be investigated, no investigation has allegedly been undertaken.

992. According to the Nepal-India transit treaty, no consignment in transit can be held without explanation, but according to information received, no explanation has been provided to date.

⁶⁶ http://www2.ohchr.org/english/issues/opinion/docs/2011-04-05_Hungary_Freedex_EndMission.doc.

993. Concern was expressed that the lengthy seizure of the newsprint material may jeopardize the work of Kantipur Publications, which publish two of the largest newspapers circulated in Nepal, the Kathmandu Post and Kantipur. Further concern was expressed that the continued seizure of the shipment, without explanation, may constitute an attempt to hamper the work of Kantipur Publications in Nepal, which has reportedly published opinion pieces that have been critical of India's policy on Nepal.

Response from the Government

994. In a letter dated 7 October 2010, the Government informed that the above-mentioned allegation has been investigated by the Government of India. The consignment was subjected to routine examination by the concerned authorities and a part of it was released on 25 June 2010. The remaining part of the consignment was released on 30 June 2010, after due inspection and verification. The Government informed that there was no unusual delay in the above procedure.

995. The bilateral trade and transit arrangements between the Governments of Nepal and India, which include the Transit Treaty and the Agreement of Co-operation to Control Unauthorized Trade, allow either party to take all necessary measures, including inter alia examination of consignments transiting through their territories, to ensure that their legitimate economic interests are not adversely affected.

Allegation letter

996. On 29 July 2010, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the situation of human rights defenders, sent an allegation letter concerning the killing of **Mr. Amit Jethwa** who was a Public Interest Law Practitioner and Right to Information Activist.

997. According to the information received, on 20 July 2010, Mr. Jethwa was shot dead by two individuals on a motorcycle as he was leaving the Gujarat High Court building after a meeting with his lawyer. The killers allegedly left on foot leaving the motorcycle, a bag and the weapon on the scene. Mr. Jethwa died at the scene before the arrival of the ambulance.

998. Mr. Jethwa had reportedly been denouncing corruption in the exploitation of the Gir forests and had alleged that a local Member of Parliament was running illegal mines near the same forests. Mr. Jethwa had filed a Public Interest Litigation against the State forest department concerning illegal mining in the Gir forests of Junagadh district on the Kathiawar peninsula in Western Gujarat.

999. Concern was expressed that the killing of Mr. Jethwa might have been related to his work in exposing corruption and denouncing illegal mining.

Response from the Government

1000. In a letter dated 20 January 2011, the Government informed that the alleged incident is under investigation and five of the six accused have been arrested. At the same time, all efforts are being made to arrest the sixth accused who is absconding.

Urgent appeal

1001. On 18 August 2010, the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the situation of Ms. **Bharathi Pillai**, Ms. **Niharga Priya**, Ms. **Sudha**, Mr. **Gnana Diraviam**, and Mr. **Anandan**, participants of a human rights training course organized by the non-governmental

organizations the Dalit Foundation (DF) and People's Watch (PW), from 11 to 20 August 2010, in Nagamalai Puthukottai, near Madurai in Tamil Nadu. The DF works to eliminate caste discrimination and caste-based violence, with a particular emphasis on Dalit women and manual scavengers, and the PW provides legal support and human rights education.

1002. According to the information received, on 15 August 2010, around 6.30 p.m., as part of their fieldwork exercise, Ms. Bharathi Pillai, Ms. Niharga Priya, Ms. Sudha, Mr. Gnana Diraviam, and Mr. Anandan went to the Veeravanallur Police Station, in Tirunelveli District of Tamil Nadu, to gather information in relation to allegations of torture of a Dalit youth by police officers at the station. The five human rights defenders identified themselves, and requested permission to Ms. P. Roswin Savimo, Sub-Inspector of police, and Mr. T. Murugesan, Inspector of police, to be provided with documents relating to the case. As a result, they were questioned and kept in the police station. It is alleged that Mr. Murugan is one of the alleged perpetrators in this case.

1003. Later in the evening, Ms. Bharathi Pillai, Ms. Niharga Priya, and Ms. Sudha requested to leave the police station and come back the next day, but Mr Ramu, Deputy Superintendent of Police of Ambasamudram, refused, arguing that they had to be further questioned. Mr. Gnana Diraviam then tried to call a program assistant from the training program, but his mobile phone, as well the phones belonging to the other defenders, got confiscated. The five defenders were taken to separate rooms to get their identification marks, and were kept in the police station until 11 p.m.

1004. At 11.45 p.m., the group of defenders arrived under police escort at the house of the Judicial Magistrate in the nearby town of Cheranmahadevi in order to be remanded into judicial custody. They were charged with using the Indian Penal Code under Section 170 (impersonating a public servant), Section 353 (assault or criminal force to deter a public servant from discharge of his duty), Section 416 (cheating by impersonation) and Section 506 (punishment for criminal intimidation). They learnt that the complainant in the case against them was Ms. P. Roswin Savimo. The group was then taken to the hospital for medical examination. The three women defenders were then transferred to Kokarakulam Women's Sub Jail in the city of Tirunelveli, and the two male defenders were taken to Ambasamudram Sub Jail.

1005. During the evening, staff members of PW tried to call the Veeravanallur Police Station to enquire about the situation of the five defenders, in vain. One staff went to the police station to meet the group, but was asked to sign some papers without being told what they were and then to leave the station immediately.

1006. Finally, it is reported that in the case remand report, Mr. Henri Tiphagne, Executive Director of PW-India, Member of the Executive Committee of the Asian Forum for Human Rights and Development (FORUM-ASIA), and a member of the Asian NGOs Network on National Human Rights Institutions, was referred to as an "absconding accused", although no charges had been filed against him, nor was he present at the police station at the time of the arrest of the five defenders.

1007. Serious concerns were expressed that the arrest and detention of Mr. Gnana Diraviam, Mr. Anandan, Ms. Bharathi Pillai, Ms. Niharga Priya, and Ms. Sudha, and the charges brought against them, might have been related to their legitimate human rights activities. Further concerns were expressed for the physical and psychological integrity of the five human rights defenders.

Allegation letter

1008. On 22 October 2010, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the situation of human rights defenders, sent an allegation letter concerning **the killing of civilians by**

military and police forces in Jammu and Kashmir. The Special Rapporteurs also brought the attention of the Government to allegations received that journalists and human rights defenders are being targeted by the authorities in relation to their work in the promotion and protection of human rights.

1009. According to information received, between 1 January and 8 August 2010, 84 civilians, 120 persons identified as militants, and 66 Indian forces personnel have been allegedly killed. It is reported that those killed by the Central Reserve Police Force (CRPF), police and army personnel were predominantly young Muslim men.

1010. "Encounter killings" are also allegedly used by security forces to create the impression of a national threat and the extension of cross-border terrorism. On 30 April 2010, for example, Indian Armed Forces claimed that three "foreign/infiltrating militants" (from Pakistan) were killed in an "encounter" in Machil sector, Kupwara district, along the Line of Control (LoC). On 28 May 2010, the three victims namely Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi were reportedly authenticated as "fake encounter" killings. Over 20 persons were killed in "encounters" in April-May 2010, and each "encounter" was reported as necessary to combating "infiltrating militants".

1011. There have also been widespread protests against "militarized governance" in the Jammu and Kashmir. The military and police forces are said to be targeting unarmed and peaceful protesters and often have used live ammunition on protesters. Civilians have reportedly reacted to this through stone pelting, damaging State property and arson. In several instances this has resulted in injury to some members of the security forces.

1012. In addition, State authorities have reportedly been targeting journalists and human rights defenders as a means of preventing them from discharging their functions. For example Advocate Mian Qayoom, President of the Jammu and Kashmir High Court Bar Association in Srinagar and also a human rights defender, was arrested allegedly because of his legal advocacy for the detained and disappeared in Jammu and Kashmir, his offer of legal counsel to dissenters against the Indian state, his arguments against the indiscriminate use of the Jammu and Kashmir Public and Safety Act (PSA), his investigations into allegations of abuse by the Indian military and police, his articulation of Jammu and Kashmir as a disputed territory, and his support of self-determination. On 18 July 2010, Advocate Ghulam Nabi Shaheen, General Secretary, Jammu and Kashmir High Court Bar Association, Srinagar, and a human rights defender, was arrested under the same Act (PSA).

1013. The mandate-holders have appended the following annex to this communication summarizing alleged killings that occurred between 11 June and 8 August 2010. They would like to seek from the Government information on the inquiries into the protests and their outcomes, on the measures taken to hold those responsible for killings accountable, and on the measures taken to prevent the recurrence of such acts. They would also like to enquire about allegations received that journalists and human rights defenders are being targeted by the authorities in order to prevent them from carrying out their work in defense of human rights.

1014. Annex: List of alleged victims of excessive use of force - According to information received, it is alleged that:

1015. On 11 June 2010, **Mr Tufail Ahmad Mattoo**, aged 17-years, a resident of Saida Kadal, Srinagar, was allegedly killed by personnel of the Jammu and Kashmir Police. According to information received Mr. Mattoo was walking with his peers, when police pursued them. He was fired upon by the police near the Gani Memorial Stadium. He was taken to the Shri Maharaja Hari Singh Hospital in Srinagar (SMHSH) by community members, where he was declared dead on arrival. An autopsy that was conducted indicated that the cause of death was the result of a tear gas canister.

1016. On 12 June 2010, **Mr. Muhammad Rafiq Bangroo**, aged 24-years, a resident of Danamazar in Safa Kadal, Srinag, was killed by members of the CRPF. He was standing near his residence and was beaten by CRPF personnel. He died at the Sher-e-Kashmir Institute of Medical Sciences Hospital (SKIMSH) in Soura, Srinagar.

1017. On 20 June 2010, **Mr. Javaid Ahmad Malla**, aged 19-years, a resident of Palpora, Noorbagh, Srinagar, was killed by members of the Jammu and Kashmir police and CRPF. Mr. Malla was killed when police and CRPF personnel opened fire on the funeral procession of Muhammad Rafiq Bangroo. He was shot with a bullet in the neck, at Waniyar near Noorbagh and was brought to SMHSH where he died on the same day.

1018. On 20 June 2010, **Mr. Mazloom Malik**, a resident of Chuntwari, Machil, Kupwara District was fired upon in the Machil sector of the LoC. An army spokesperson stated that Pakistani troops opened fire on Indian posts and positions in Machil sector, in which Mazloom Malik and another army porter were killed. A post mortem report revealed that he was shot from close range. Information made available indicates that they were killed in a fake encounter by personnel of the Indian Armed Forces.

1019. On 25 June 2010, **Mr. Firdous Ahmad Kakroo**, aged 16 years, a resident of Niglee, Sopore, Baramulla district was killed by a bullet fired by CRPF personnel in Jamia Qadeem, Sopore. He was killed when CRPF personnel fired upon a procession of civilians demanding the release of the bodies of two alleged militants killed in Sopore town, wanting proof that these were not possible fake encounter executions of local civilians. At this procession, protesters were pelting stones.

1020. On 25 June 2010, **Mr. Shakeel Ahmad Ganai**, aged 24 years, a resident of Lalad, Sopore, Baramulla district was killed by a bullet fired by personnel of the 177 Battalion of the CRPF in Chankhan, Sopore. He was killed when CRPF personnel fired upon a procession of civilians that was demanding release of the bodies of two alleged militants killed in Sopore town, wanting proof that these were not possible fake encounter executions of local civilians. This procession had defied curfew to attend the funeral of Firdous Kakroo who was killed in Sopore.

1021. On 27 June 2010, **Mr. Bilal Ahmad Wani**, aged 22 years, a resident of Kralteng, Sopore, Baramulla district was killed by a bullet fired into his neck by CRPF personnel in Kralteng, Sopore. Mr. Wani was killed while he was entering a mosque to offer prayers.

1022. On 28 June 2010, **Mr. Tajamul Bashir Bhat**, aged 17 years, a resident of Wadoora, Sopore, Baramulla district, was killed by personnel of the CRPF and the Special Operations Group of Jammu and Kashmir Police. He was shot by a bullet near Kapra Cinema outside the headquarters of the 92 Battalion of the CRPF. He was killed when CRPF and Special Operations Group personnel fired upon a peaceful procession of civilians. He was brought to the sub-district hospital in Sopore by community members, where he died.

1023. On 28 June 2010, **Mr. Tauqeer (Asif) Ahmad Rather**, aged 9 years, a resident of Rather Mohalla, Delina, Baramulla district was killed by CRPF personnel in Delina. He was part of a peaceful procession from Baramulla town that was proceeding on foot toward Sopore. Mr. Rather was shot by a bullet that lodged in his chest and died from the injuries sustained on his way to the district hospital in Baramulla.

1024. On 29 June 2010, **Mr. Ishtiyahq Ahmed Khanday**, aged 15 years, a resident of S. K. Colony, Islamabad, Anantnag district, **Mr. Imtiyaz Ahmad Itoo**, aged 17 years, resident of Watergam, Dialgam, Islamabad, Anantnag district and **Mr. Shujat-ul-Islam**, aged 17 years, a resident of Anchidora, Islamabad, Anantnag district were killed by police personnel in the S. K. Colony area. Eyewitnesses stated that police personnel forcibly entered a house in the S. K. Colony where the three youths had taken shelter, as police were chasing youth in the area. The police opened fire on the victims, Mr. Khanday and Mr. Itoo died immediately

while Mr. Shujat-ul-Islam died on his way to the SMHSH in Srinagar. A judicial inquiry took place and indicted senior police officials however its recommendations were not implemented.

1025. On 6 July 2010, the body of **Mr Muzaddar Ahmad Bhat**, aged 17 years, a resident of Gangbug, Batamallo, Srinagar, was recovered from Doodganga Nullah stream in Baramulla district. According to local community members, he was arrested by police and CRPF personnel during civil demonstrations on the evening of 5 July 2010, and it is alleged that he had been murdered by police and/or CRPF personnel and his body been disposed of in the Doodganga Nullah. Police officials maintain that Muzaffar died of drowning in the stream. Eyewitnesses reported that Muzaffar Bhat's body bore visible torture marks and that the body, when recovered, was not swollen from the water.

1026. On 6 July 2010, **Mr Fayaz Ahmad Wani**, aged 24 years, a resident of Gangbug, Batamaloo, Srinagar, was killed by a bullet fired by CRPF and/or police personnel, in Batamaloo. The killing took place during a peaceful march to protest the death of Mr. Muzaffar Ahmad Bhat. The police and CRPF personnel used tear gas canisters/grenades and opened fire on the procession.

1027. On 6 July 2010, **Ms Yasmeen Jan**, aged 25 years, a resident of Lashman Pora Dander Khah, Batamaloo, in Srinagar, was killed by a bullet fired into her chest by CRPF and police personnel. She was shot while standing near a window inside her home.

1028. On 6 July 2010, **Mr. Abrar Ahmad Khan**, aged 16 years, a resident of Maisuma Bund, Srinagar, was killed by a bullet fired into his neck by CRPF and police personnel at Maisuma Bund, at a small protest gathering mourning the death of Muzaffar Bhat and Fayaz Wani. The protesters were pelting rocks.

1029. On 17 July 2010, **Mr Faizan Ahmad Bhuroo**, aged 13 years, a resident of Jalal Sahib, Baramulla district, drowned as he jumped into the Jhelum river in Baramulla at Azadgunj Bridge when Special Operations Group personnel attempted to arrest him. The incident took place when he was returning home from the Main Chowk in Baramulla.

1030. On 19 July 2010, **Mr Fayaz Ahmad Khanday**, aged 23 years, a resident of Binner, Baramulla district was killed by a bullet fired by CRPF and police personnel who fired at a peaceful funeral procession in Baramulla. Those in the funeral procession were on their way to the District Commissioners Office to lodge a protest when they were attacked by CRPF and police personnel. The protesters pelted stones and the police opened fire killing Fayaz Ahmad.

1031. On 25 July 2010, **Mr Tariq Ahmad Dar**, aged 17 years, a resident of Panzala, Rafiabab, Baramulla district, was killed in police custody at Panzala Police Station. The police stated that he had committed suicide and that he was a drug addict. Reports indicated that his body, which was recovered from the holding cell at Panzala Police Station, had visible marks of torture on the neck and back. The victim was arrested on 18 July 2010, on uncorroborated charges of being an operative of a group known as Lashkar-e-Toiba.

1032. On 30 July 2010, **Mr. Muhammad Ahsan Ganie**, aged 45 years, a resident of Amargarh, Sopore, Baramulla district, and **Mr. Showkat Ahmad Chopan**, aged 17 years, a resident of Amargarh, Sopore, Baramulla district, were killed by bullets. The incident took place when CRPF personnel attacked people headed towards the Krankshivan Colony to offer Friday prayers at the local mosque, near Taqwa Masjid located between Krankshivan and Amargarh localities in Sopore town.

1033. On 30 July 2010, **Mr. Adil Ramzan Sheikh**, aged 13 years, a resident of Pattan, Baramulla district and **Mr. Nazir Ahmad Mir**, aged 23 years, a resident of Sheeri, were killed by a bullet fired by CRPF personnel. They were part of a demonstration dissenting the killings at Sopore and the firings at Chanapora in Srinagar. After the attack of the Pattan

Police Station, the demonstrators set fire to a building and two vehicles, in response CRPF personnel opened fire. Nine police officers that were inside were rescued. The victims died at SKIMSH in Srinagar.

1034. On 31 July 2010, **Mr. Javaid Ahmad Teli**, aged 20 years, a resident of Bungalbagh, Baramulla district, was killed by a bullet that lodged in his head, fired by personnel of the Special Operations Group. The incident took place at the Cement Bridge in Baramulla town and at the moment of the firing, there were no protests or stone pelting. The victim died at SKIMSH in Srinagar.

1035. On 31 July 2010, **Mr. Mudasir Ahmad Lone**, aged 17 years, a resident of Herpora, Naidkhai, Sumbal, Bandipora district, was killed by a bullet fired by CRPF and police personnel. He was participating in a protest dissenting the unprovoked beating of boys playing in the ground opposite the Indian Reserve Police camp at Naidkhai. The protest was stopped and attacked by CRPF and police personnel. In response the protesters attacked the Indian forces camp at Naidkhai.

1036. On 1 August 2010, **Mr. Nayeem Ahmad Shah**, aged 20 years, a resident of Pampore, Pulwama district and **Mr. Rayees Ahmad Wani**, aged 18 years, a resident of Pampore, Pulwama district, were killed by bullets fired by CRPF personnel. The deceased were among the people who were holding demonstrations on the highway and staged a peaceable sit-in against the repression by Indian forces in Kashmir. CRPF and police personnel attacked the sit-in.

1037. On 1 August 2010, **Ms. Afroza Teli**, aged 15 years, a resident of Khrew, Pulwama district, was killed by a bullet that lodged in her head, fired by CRPF and/or Special Operations Group personnel. She was participating in a peaceful demonstration. Ms. Teli died at SKIMSH in Srinagar.

1038. On 1 August 2010, **Mr. Javaid Ahmad Sheikh**, aged 18 years, a resident of Wuyan, Pampore, Pulwama district, and **Mr. Muhammad Amin Lone**, aged 22 years, a resident of Shalnag, Khrew, Pulwama district, were killed and dozens injured in a blast at the Special Operations Group camp of Jammu and Kashmir Police at Khrew, Pulwama district, after civilians, largely youth, set it on fire following the killing of Afroza Teli and two young men by police and CRPF personnel earlier that day. The Special Operations Group camp contained an armory of explosives. Local community members alleged that the explosives had been readied and triggered by Special Operations Group personnel to harm the protesters. No Special Operations Group officers were injured or killed during the incident.

1039. On 1 August 2010, **Mr. Riyaz Ahmad Bhat**, aged 25 years, a resident of Khrew, Pulwama was shot in the head CRPF and police personnel. He died on 3 August 2010, at SKIMSH in Srinagar. He was marching with peaceful protesters to express solidarity with family members of victims killed the same day, when police and CRPF troops opened fire on them.

1040. On 1 August 2010, **Mr. Tariq Ahmad Dar**, aged 17 years, a resident of Semthan, Bijbehara, Anantnag district, was shot in the head by CRPF and/or police personnel. He was among the people who were protesting the actions of the Indian security forces the Kashmir, where a large demonstration was taking place.

1041. On 2 August 2010, **Mr. Basharat Ahmad Reshi**, aged 14 years, a resident of Wachi, Sangam, Anantnag district, was killed by a bullet fired by police personnel, while he was going to join a protest. Local community members stated that a policeman fired upon him and subsequently his body was thrown into the Jehlum River.

1042. On 2 August 2010, **Mr. Irshaad Ahmad Bhat**, aged 17 years, a resident of Reshipora, Sangam, Anantnag district, was killed by a bullet fired by CRPF and police personnel.

1043. On 2 August 2010, **Mr. Ashiq Hussain Bhat**, a student in the ninth grade, resident of Kulgam, Anantnag district and **Mr. Rameez Ahmad Bhat**, aged 6 years, a resident of Kulgam, Anantnag district, were killed by bullets fired by CRPF personnel. The CRPF personnel opened fire on peaceful protesters at Chawalgam village as they proceeded toward Kulgam town.

1044. On 2 August 2010, **Mr. Hafiz Muhammad Yaqoob Bhat**, aged 22 years, a resident of Zadoora, Kakapora, Pulwama district, was killed by a bullet fired into his chest by CRPF and police personnel, while marching with peaceful protesters to Khrew to express solidarity with family members of victims killed on 1 August 2010.

1045. On 2 August 2010, **Mr. Khurshed Ahmad War**, aged 27 years, a resident of Shumnag, Kralpora, Kupwara district, was killed by a bullet of CRPF personnel when they opened fire on protesters who were part of a large demonstration near Khuzanmutti Bridge, as they marched from Kralpora.

1046. On 2 August 2010, **Mr. Sameer Ahmad Rah**, aged 9 years, a resident of Batamaloo, Srinagar, died after being beaten by CRPF personnel. According to a witness, the CRPF personnel grabbed Mr. Rah at Batamaloo and beat him to death. He was playing in the locality where a demonstration had taken place earlier that day. It is alleged that CRPF personnel beat and tortured him to death, including driving a bamboo stick into his mouth.

1047. On 3 August 2010, **Mr. Meraj-ud-Din Lone**, aged 23 years, a resident of Barthana, Qamarwari, Srinagar, was killed by a bullet fired by CRPF and police personnel, at Qamarwari. They were demonstrating peacefully.

1048. On 3 August 2010, **Mr. Fida Nabi Lone**, aged 20 years, a resident of Qamarwari, Srinagar, was hit by a bullet fired by CRPF and police personnel when they opened fire on demonstrators protesting the death of Meraj-ud-Din Lone of Qamarwari. The demonstrators were pelting stones. He died on 8 August 2010, at SKIMSH in Srinagar.

1049. On 3 August 2010, **Mr. Anis Ahmad Ganai**, aged 17 years, a resident of Dangerpora, Narwara, Srinagar, was killed by a bullet fired into his abdomen by CRPF and police personnel in Narwara near the Iddgah. He was among protesters for the killing of Meraj-ud-Din Lone. He died in SMHSH in Srinagar. The demonstrators were pelting stones. He died on 8 August 2010, at SKIMSH in Srinagar.

1050. On 3 August 2010, **Mr. Suhail Ahmad Dar**, aged 15 years, a resident of Zainakote, Srinagar, was killed by a bullet fired into his abdomen by CRPF and police personnel, at Parimpora. He was with people protesting the killing of Meraj-ud-Din Lone. The demonstrators were pelting stones. He died on 8 August 2010, at SKIMSH in Srinagar.

1051. On 3 August 2010, **Mr. Jehangir Ahmad Bhat**, aged 23 years, a resident of Chenigam Yaripora Kulgam, Anantnag district, was killed by a bullet fired by CRPF and police personnel at Kulgam. He was among the people protesting the actions of the Indian security forces in Kashmir. The protesters were pelting stones.

1052. On 4 August 2010, **Mr. Muhammad Yaqoob Bhat**, aged 20 years, a resident of Nund Resh Colony, Bemina, Srinagar, was killed by a bullet fired by personnel of a patrolling party of CRPF, while standing near his house.

1053. On 4 August 2010, **Mr. Muhammad Iqbal Khan**, aged 22 years, a resident of Lone Mohalla, Chanapora, Srinagar, died at SKIMSH. He was hit by bullets fired into his face and neck by CRPF and police personnel on 30 July 2010, in Chanapora. He was participating in a peaceful demonstration. The demonstrators were attacked by CRPF and police personnel, resulting in the death of Muhammad Khan and four others being injured. Following the shootings, protesters pelted stones.

1054. On 5 August 2010, **Mr. Shabir Ahmad Malik**, aged 30 years, a resident of Lonepora, Newa, Pulwama district, was killed by a bullet fired by CRPF and police personnel who resorted to indiscriminate firing on a peaceful sit-in at Wagoora on the outskirts of Pulwama town.

1055. On 5 August 2010, **Mr Ghulam Nabi Badyari**, aged 48 years, a resident of Ganpatyar, Habba Kadal, Srinagar, died from a bullet wound in his abdomen fired by CRPF personnel. He was shot near his residence the previous night when there were protests being held in the vicinity. He was wounded at Ganpatya and was brought to SMHSH where he died.

1056. On 6 August 2010, **Mr Rameez Ahmad**, aged 22 years, a resident of Mundji, Sopore, Baramulla district, was shot by a bullet fired by CRPF personnel. He was injured along with seven others at Warpora, Sopore, Baramulla district, when CRPF personnel opened fire on a group of protesters participating in a peaceful demonstration against the repression by Indian security forces in Kashmir. He died on 7 August 2010, at SKIMSH in Srinagar.

1057. On 7 August 2010, **Ms. Aisha Shiekh**, aged 55 years, a resident of Ganpatyar, Habba Kadal, Srinagar, was shot in the chest by CRPF personnel. She was hit when travelling with her granddaughter to purchase milk. She died at Ganpatyar, on 8 August 2010, at SMHSH in Srinagar.

Response from the Government

1058. In a letter dated 3 December 2010, addressed to the United Nations High Commissioner for Human Rights, the Government apologized for the delay in acknowledging the letter of 22 October 2010, and assured that the letter had been forwarded to authorities in India for their due consideration. The Government stressed the complexity of the situation that has a strong dimension of cross-border terrorism and extremism, aimed at challenging the very idea of a secular, liberal and democratic India, as also her modest level of economic development. The Government further referred to its sensitivities on this issue and its current position on the matter.

1059. On the issue of the Armed Forces Special Powers Act, the Government assured that it is seized of the concerns that have been expressed by various quarters, including the civil society, and would give due attention to the views of the High Commissioner.

Urgent appeal

1060. On 16 February 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the case of **Mr. Julfikar Ali**, a District Human Rights Monitor (DHRM) of the human rights non-governmental organization MASUM in the Murshidabad District of West Bengal. On behalf of MASUM, Mr. Julfikar Ali investigates alleged torture cases perpetrated by State agents, and accompanies victims of torture in seeking legal redress. Mr. Julfikar Ali was the subject of an allegation letter sent by the then Special Representative of the Secretary-General on the situation of human rights defenders on 11 March 2008. Your Excellency's Government responded to this letter on 6 April 2009.

1061. According to the new information received, on 2 January 2011, an unidentified police officer, in plain clothes, from the Raninagar Police Station, came to the house of Mr. Julfikar Ali, who was away at the time. The police officer informed Mr. Julfikar Ali's family that the arrest warrant related to criminal case Raninagar Police Station no.8/2008, which was the subject of the aforementioned letter, was still pending and that he should immediately surrender himself before the court of law. As previously stated, the complaint relates to an incident which reportedly took place on the night of 11 January 2008, at the

Kaharpara Border Security Force (BSF) outpost, whereas Mr. Julfikar Ali was reportedly not in the vicinity of the outpost that night. In addition, the three other persons mentioned in the complaint are not reportedly known to Mr. Julfikar Ali.

1062. On 13 January 2011, Mr. Julfikar Ali made a statement on his case to the Special Rapporteur on the situation of human rights defenders, in Kolkata, West Bengal, during her country mission to India.

1063. A few days after Mr. Julfikar Ali delivered his testimony, police visits to his home reportedly became more frequent, during which his family has been asked for his whereabouts.

1064. On 11 February 2011, Mr. Julfikar Ali, accompanied by Mr. Kirity Roy, Secretary of MASUM, went to the District Court to surrender. His decision was motivated by the need to settle the issue, and to be able to continue his human rights activities. Mr. Julfikar Ali filed a petition before the District Court for anticipatory bail, which was granted with a bond of 3,000 Indian Rupees.

1065. On 14 February 2011, the District Court granted another anticipatory bail to Mr. Julfikar Ali in relation to another complaint filed by the BSF (case Raninagar PS no. 33 dated 16 February 2008), with a bond of 5,000 Indian Rupees. In this case, Mr. Julfikar Ali's name reportedly did not appear in the complaint filed by the BSF.

1066. Serious concern was expressed that the aforementioned acts of judicial harassment against Mr. Julfikar Ali may be related to his human rights activities, i.e. his reporting of alleged violations committed by BSF officials, and might have increased due to interaction with the Special Rapporteur on the situation of human rights defenders during her recent visit to India. Further concern was expressed for the physical and psychological integrity of Mr. Julfikar Ali and his family.

Response from the Government

1067. In a letter dated 29 March 2011, the Government of India acknowledged receipt of the urgent appeal sent on 16 February 2011. The Special Rapporteur looks forward to receiving a substantive reply addressing the concerns raised in the urgent appeal.

Urgent appeal

1068. On 28 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the situation of **Ms. Teesta Setalvad**, Secretary of the organization Citizens for Justice and Peace (CJP), a Mumbai-based non-governmental organization. Ms. Setalvad, a prominent human rights defender and a lawyer by profession, has been advocating for the rights of victims and survivors of the violence that took place during the Gujarat Riot of February 2002. Ms. Setalvad and CJP have filed cases relating to the riots, and have been pressing for prosecution of the perpetrators of the riots since 2002.

1069. According to the information received, in the conduct of her professional activity as a lawyer providing legal support to victims of the Gulbarg Society massacre which took place during the Gujarat riots of February 2002, Ms. Teesta Setalvad had sent, on 5 and 7 October 2010, respectively, to Mr. R.K. Raghavan, the Chair of Special Investigation Team (SIT), letters voicing her concern regarding the lack of protection by the SIT for witnesses and victims.

1070. On 20 January 2011, Justices D.K. Jain, P. Sathasivam and Aftab Alam, Supreme Court judges handling the case surrounding the Gulbarg Society massacre which took place during the Gujarat riots of February 2002, reportedly reprimanded Ms. Setalvad for sending copies of letters she had sent on 5 and 7 October 2010, respectively, to Mr. R.K. Raghavan,

to the Office of the High Commissioner for Human Rights (OHCHR). Allegedly, Ms. Setalvad was told by the judges that the court did not "appreciate" letters about the proceedings being sent to OHCHR and that they "take it as interference in [their] proceedings".

1071. On 17 February 2011, Ms. Setalvad was again allegedly issued with a verbal warning against writing to OHCHR by Justices D. K. Jain, P. Sathasivam and Aftab Alam.

1072. When explaining that OHCHR receives information on any human rights matter from all over the world, Ms. Jaiswal, Ms. Setalvad's lawyer, was allegedly told that her client must promise not to send any further communication to OHCHR on information regarding the proceedings.

1073. The source also mentions that Ms. Setalvad's integrity has been put into question due to the state government of Gujarat's alleged efforts to undermine her professional credibility, including accusations of tutoring witnesses and tampering with evidence. We understand Ms. Setalvad believes her physical safety is further endangered by the reported hostility of the Gujarat state and its police, on the basis of threats of arrests made against her. She has also reportedly been followed by unmarked vehicles immediately following court hearings on more than one occasion.

1074. Concern was expressed that the restriction placed by the Supreme Court of India on Ms. Setalvad's freedom of expression, and the harassment and threats against her, may be related to their legitimate activities in defence of human rights, in particular upholding the justice of victims of the Gulbarg Society Massacre.

Response from the Government

1075. In a letter dated 29 March 2011, the Government of India acknowledged receipt of the urgent appeal sent on 28 March 2011. The Special Rapporteur looks forward to receiving a substantive reply addressing the concerns raised in the urgent appeal.

Response from the Government to a communication sent before the reporting period

1076. In a letter dated 25 June 2010, the Government responded to the communication sent on 30 November 2004 by the former mandate holder and the former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning Mr. **Rafiq Maqbool**, journalist with Associated Press, and Mr. **Amin War** of *The Tribune*. The Government informed that it has examined the complaint and found it to be inaccurate, as the subjects were not beaten by the police.

1077. In a letter dated 25 May 2010, the Government responded to the communication dated 5 November 2009 by the Special Rapporteur and the Special Rapporteur on the situation of human rights defenders concerning the situation of Mr. **Chotan Das**, Mr. **Bhanu Sarkar** and Mr. **Ramesh Das**, informing that it had examined the complaint and found it to be inaccurate. Contrary to the allegation, one of the subjects, Mr. Chotan Das, was neither arrested, nor detained by any police personnel. The two other subjects mentioned in the communication, Mr. Bhanu Sarkar and Mr. Ramesh Das, belong to Bandi Mukti Committee that is an outfit affiliated with a banned extremist organization CPJ-Maoist, and were detained on 6 October 2009 while demanding release of some prisoners connected with another front organization controlled by this banned extremist outfit. They were subsequently released after questioning.

1078. In a letter dated 6 December 2010, the Government responded to the communication dated 24 September 2009 sent by the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the Special

Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, concerning regarding the arrests of Mr. **Jiten Yumnam**, Ms. **Longjam Memchoubi**, Mr. **Likmabam Tompok**, Mr. **Amom Soken**, Mr. **Irom Brojen**, Mr. **Thiyam Dinesh**, Mr. **Chung-shel Koireng**, Mr. **Taorem Ramananda** and Mr. **Samjetshabam Nando**. The Government informed that it had examined the communication and found its chief to be inaccurate. The investigation into the matter, including those of relevant medical records, showed that the subject was not tortured by the police. Contrary to what was alleged in the communication, the medical certificate concerning the subject does not state the subject had been treated for any electric shocks.

Observations

1079. The Special Rapporteur thanks the Government for its responses, but notes that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 18 August 2010, as well as to 14 communications sent earlier. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Indonesia

Urgent appeal

1080. On 26 March 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the situation of participants to an Asian regional meeting of the **International Lesbian, Gay, Bisexual, Trans and Intersex Association** (ILGA).

1081. According to the information received, on 26 March 2010, more than 150 human rights defenders representing 100 organizations from 16 Asian countries gathered in Surabaya to participate in a three-day Asian regional meeting of the ILGA.

1082. In response to protests by conservative Muslim groups and the Indonesian Ulema Council, the police reportedly ordered the cancellation of the conference, and national and international participants were ordered to leave the conference hotel.

1083. At the time of drafting the present appeal, a group of militant fundamentalists was inside the hotel, attempting to identify conference participants, by conducting a room-by-room search.

1084. According to various reports, the police were not taking any measure to ensure the safety of the participants.

1085. Grave concern was expressed for the physical and psychological integrity of the participants of the ILGA meeting. We remind the Government of Indonesia of its responsibility under international human rights law to ensure the safety of the participants.

Urgent appeal

1086. On 19 July 2010, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the detention of **Fredy Akihary**, **Leonard Hendriks**, **Semuel Hendriks**, **Piter Johan**, **Aleks Malawauw**, **Buce Nahumury Ferdinand Arnold Rajawane**, **Johnny Riry**, **Mercy Riry**, **Abraham Saiya**, **Ferjon Saiya**, **Johan Saiya**, **Jordan Saiya**, **Pieter Saiya**, **Ruben Saiya**, **Stevi Saiya**, **Marthen Saiya**, **Yefta Saiya**, **Yohanis Saiya**, **Johnny Sinay**, **Melkianus Sinay**, **Yosias Sinay**, **Johan Teterissa**, , all political activists, as well as **Flip**

Malawau, Barce Manuputty, Yutus Nanarian, Petrus Rahayaan Arens Arnol Saiya, Piter Elia Saiya, Elia Sinay and Alexander Tanate.

1087. According to the information received, on 29 June 2007, 23 political activists, mostly farmers, performed a traditional Maluku war dance in front of the President of Indonesia and other officials, during a ceremony to mark the 14th anniversary of National Family Day in Independence Field, Ambon, Maluku Province. At the end of the dance, they unfurled the Benang Raja flag, the pro-independence symbol of South Maluku. The political activists had not been registered as part of the ceremony, and were immediately arrested by approximately 20 police and presidential guards.

1088. During the arrest and in the police vehicle, some of the activists were punched and beaten with rifle butts. They were transferred between police stations, including the regional police station (Polda, Polisi Daerah), the district police station (Polres, Polisi Resort) and the police mobile brigade (Brimob, Brigade Mobil Tantui base). Most of the detainees were subjected to torture and ill-treatment in police custody. They were forced to crawl on their stomachs over hot asphalt, billiard balls were forced into their mouths, they were whipped with electric cables, beaten on the head with rifle butts until their ears bled, and shots were fired close to their ears. Afterwards, while they were still bleeding, they were thrown into the sea and dragged out. It has been reported that Special Detachment 88 officers were responsible for the most severe assaults.

1089. On the same day, nine other people were arrested for having helped organize the event or for having watched it. Eight of them are serving sentences of between six and 12 years imprisonment. Flip Malawau, Barce Manuputty, Petrus Rahayaan, Arens Arnol Saiya, Elia Sinay, Alexander Tanate and Johan Teterissa were all subjected to beatings with hard objects, including rifle butts, during their pre-trial detention.

1090. All of the detainees were denied contact with the outside world for 11 days. Once the trials began, the detainees were transferred to the Waiheru detention centre, where some were coerced into signing statements waiving their right to a lawyer. Those who had lawyers assigned by the State were advised to plead guilty and waive their right to appeal. Additionally, some of the detainees did not appear before a judge and were nonetheless convicted in absentia. They were all sentenced to between seven and 20 years of imprisonment. No investigation has yet been launched into the allegations of torture and ill-treatment.

1091. On 10 March 2009, 11 of the detainees were transferred to correctional facilities in Java, more than 1,000 kilometres away from their families. It is believed that neither the detainees nor their families were informed of their transfer. Lawyers from the Malang branch of the Legal Aid Institute (Lembaga Bantuan Hukum, LBH) Surabaya have been seeking permission to visit three of them, Leonard Hendricks, Johan Teterissa and Abraham Saiya, while in detention in Lowokaru Prison in Malang, East Java. On 12 February 2010, LBH received a copy of a letter from the East Java regional office of the Ministry of Justice and Human Rights to the Director General of Prisons in Jakarta, informing them of LBH's application and asking the Director General to coordinate with the Foreign Affairs Ministry. They have not heard either from the East Java office of the Ministry of Justice and Human Rights or the Director General of Prisons since then.

1092. Particular concern was expressed over Mr. Teterissa, who has not received medical treatment since the arrest and ill-treatment. He has a high fever, is in constant pain and cannot see properly. The prison authorities have denied his request for external medical treatment, and a doctor who went to see him on 15 July was also turned away. It is also believed that Mr. Teterissa may be denied access to sufficient food and clean water in prison.

Observations

1093. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not replied to his communication dated 26 March 2010 and 19 July 2010, as well as to 11 communications sent earlier. He considers response to his communications an important part of cooperation by Governments with his mandate, and urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

1094. The Special Rapporteur reiterates his concern regarding the allegations in his communications, particularly the communication of 26 March 2010 taking into account the number of human rights defenders present at the LGBT gathering. Moreover, he is also concerned about reports that the police did not take measures to ensure that those present were offered adequate protection. As such, he urges the Government to provide information about the allegations at its earliest convenience.

Iran (Islamic Republic of)

Urgent appeal

1095. On 22 March 2010, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal to the Government regarding Mr. **Heshmatollah Tabarzadi** (“Heshmat”), a journalist and leader of the Democratic Front of Iran, a banned political party.

1096. According to the information received, Mr. Heshmatollah Tabarzadi was arrested on 27 December 2009 in Tehran, by intelligence officers from the Revolutionary Guard. Upon arrest, his computer, phone book, photo albums, video tapes, fax and mobile phone were confiscated. It is believed that Mr. Tabarzadi’s arrest may be as a result of an article which was published on 17 December in a United States-based newspaper, and which stated that “if the government continues to opt for violence, there very well may be another revolution in Iran”.

1097. Mr. Tabarzadi has been accused of “insulting the Supreme Leader”, “insulting the Islamic Republic” and “acting against national security”. He has not had access to a lawyer, but has been able to receive visits from his family and to talk to them on the phone, albeit while being monitored by the police administration. During his interrogation by intelligence officers, Mr. Tabarzadi was blindfolded, beaten and threatened with the death penalty.

1098. Concern was expressed that the arrest and detention of Mr. Tabarzadi may form part of an attempt to stifle his rights to freedom of opinion expression, peaceful assembly, and participation in the conduct of public affairs, directly or through freely chosen representatives, in the country. In light of the above allegations of threats and ill-treatment, further concern was expressed for the physical and psychological integrity of Mr. Tabarzadi.

Response from the Government

1099. In a letter dated 9 February 2011, the Government replied to the urgent appeal of 22 March 2010 as follows.

1100. In connection with Mr. Heshmatollah Tabarzadi’s case, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to reports, Mr. Tabarzadi has been charged with propaganda against the system of the Islamic Republic of Iran, endangerment of national

security through unlawful association, conspiracy with the intention of disturbing public security, insults against the leadership of the country and disruption of public order. Mr. Tabarzadi was arrested on 28 December 2009. On virtue of articles 500, 514, 610 and 618 of the Islamic Penal Code (IPC), Branch 26 of Tehran Province's Court of Revolution found the accused guilty of all charges and sentenced Mr. Tabarzadi to one year Taziri (in Islamic jurisprudence/Figh'h this term refers to sentences which carry variable levels of punishment, as determined by the law and the judge respectively) imprisonment, for engaging in propaganda against the system of the Islamic Republic of Iran, two years of additional Taziri imprisonment for insulting the country's Leadership, also five years of Taziri imprisonment for association and conspiracy with the intention of endangering national security, as well as one year's Taziri imprisonment and 74 Taziri lashes for disrupting public order through participation in illegal gatherings.

1101. The verdict was reached, in compliance with relevant legal procedures, after Mr. Tabarzadi's defense team – namely Mr. Mohammad Oliayi-Fard, Mr. Abdolfattah Soltani, Mr. Jahangir Mahmoudi-nejad, Ms. Nasrin Sotoudeh, Ms. Giti Pourfazel and Ms. Sara Najibi – mounted their defense. The verdict was contested and appealed by Mr. Jahangir Mahmoudi-nejad. As a result Branch 54 of Tehran province's Appeal Court re-examined the verdict. Nevertheless, on the basis of Para A of article 275 of the IPC the Court rejected the appeal through judgment No.968 dated 1 January 2011. However, the court cleared Mr. Tabarzadi of the particular charge of “disrupting public order through participation in illegal gatherings”.

1102. It is worth noting that before his most recent arrest, and from 1996 onwards, on several occasions Mr. Tabarzadi had been convicted of several charges, including propaganda against the system of the Islamic Republic of Iran. Two of his Taziri imprisonments sentences, were replaced by fines and in another instance he was handed a suspended prison sentence. Also back in 2004, he was sentenced to fourteen years of Taziri imprisonment, by Tehran Province's Court of Revolution (verdict No. 150/36/83 of 20 December 2004) on the basis of articles 498, 500, 514 and 698 of the IPC also by virtue of article 19 of the IPC he was sentenced and banned from engaging in social activities for 10 years. This verdict was contested by Mr. Tabarzadi's attorney – Mr. Ali Akbar Behmanesh. As a result the case was re-examined by Branch 36 of Tehran Province's Court of Appeal and later by Branch 7 of the Supreme Court. Ultimately Mr. Tabarzadi was sentenced to nine years of Taziri imprisonment and banned from engaging in social activities for 10 years.

1103. According to information provided to the High Council of Human Rights, despite his definitive conviction and ban from engaging in social activities, on Islamic compassionate grounds, Mr. Tabarzadi was given home leave. However, Mr. Tabarzadi abused his leave and violated his pledge to refrain from endangering national security by engaging in activities against the system of the Islamic Republic of Iran. Mr. Tabarzadi's disregard of the above has led to his conviction.

1104. Presently, Mr. Tabarzadi is serving his sentence and like other prisoners, is accorded his legal rights.

Urgent appeal

1105. On 1 April 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the situation of Mr. **Isa Saharkhiz**, a citizen of Iran and resident of Teheran. He is a pro reform movement journalist and a political analyst in Iran. He is a member of the Association of Iranian Journalist Syndicate and a member of the Central Council of the Committee for Protect of Press Freedom. Mr. Isa Saharkhiz is a founding member of the Society for the Defense of

Freedom of the Press (SDFP) in Iran. The SDFP has been outspoken in its opposition to censorship and press suppression, and the constant harassment and imprisonment of journalists. Mr. Isa Saharkhiz was instrumental in establishing the Golden Pen award. The SDFP awards the Golden Pen every year to a person who has taken important steps to defend the freedom of the press in Iran. He is also a civil society and human rights activist.

1106. According to the information received, Mr. Isa Saharkhiz was detained at home by eight plainclothes officers, on July 4, 2009, after having been in hiding since his family home was raided on 20 June. No arrest warrant was presented to him, nor was he informed of the reasons and legal basis for his arrest. He was taken to an unknown location, where he was reportedly tortured during the interrogation, and suffered from broken ribs as a result.

1107. Although his family and his lawyer tried to obtain information about his place of detention, the Iranian authorities failed to provide this information for a considerable time. He is now believed to be held at Evin Prison, under the surveillance of the Revolutionary Guard. According to the source, for the first sixty two (62) days of his detention, he was held incommunicado and in solitary confinement.

1108. Before his arrest, on 20 June 2009, his family home in Tehran had been raided whilst he was travelling in Northern Iran and his computer and campaign materials supporting the opposition presidential candidate Mehdi Karroubi were confiscated. On 2 July, Mr. Isa Saharkhiz had posted an article on news website Rooz in which he criticized the Supreme Leader, Ayatollah Sayed 'Ali Khamenei.

1109. Concern was expressed that the arrest and detention of Mr. Isa Saharkhiz might be directly related to his work in defence of human rights, in particular the non-violent exercise of his right to freedom of expression. Further concern was expressed that his detention may form part of a broader pattern to intimidate other journalists.

Response of the Government

1110. In a letter dated 7 October 2010, the Government responded to the communication dated 1 April 2010. According to information we have received, Mr. Saharkhiz was in charge of foreign news service of one of the presidential candidates and played an effective role after the election in propagating fictitious news, attributing fabricated allegations to high-ranking officials of the country, disturbing public mind and provoking unrest. He was arrested on the basis of a warrant, and after completion of investigations and collection of evidence; the investigating judge on 3 July 2009 remanded the accused in light of previous records of commission of numerous offences.

1111. On 14 December 2009 an indictment was issued charging him for his actions in waging propaganda against the Islamic Republic of Iran, insulting the high-ranking officials of the country and disturbing public minds, his case was sent to the court – Branch 15 – and the first hearing was held on 18 July 2010. He has four defence lawyers. Despite the factious claim concerning his lawyers not being able to have access to his dossier, according to our inquiries his defence lawyer came to the court and read his case on 2 Esfand 1388 and 14 Farvardin 1389. Moreover, the lawyers met their client number of times. Mr. Saharkhiz is serving his sentence in the general cell of Evin Prison and is in good health. In relation to having telephone contacts, his family visits him weekly. Claims concerning the mistreatment of Mr. Saharkhiz in prison are rejected.

Urgent appeal

1112. On 23 June 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding the arrest and detention of Ms. **Narges Mohammadi** and Mr.

Abdolreza Tajik. Ms. Narges Mohammadi is the deputy head of the Defenders Human Rights Centre (DHRC). Mr. Abdolreza Tajik is a journalist and member of the DHRC. The closure of the Defenders Human Centre and the arrest and detention of, as well as judicial proceedings against its director and members were the subject of several communications sent to your Excellency's Government, including on 16 July 2009, 18 June 2009, 19 January 2009, 31 December 2008 and 22 December 2008. Mr. Tajik was also the subject of joint urgent appeals sent on 10 July 2009 and 7 January 2010.

1113. According to the information received, on 10 June 2010, Ms. Narges Mohammadi was arrested at her home in Tehran by security forces. According to information received, those carrying out Ms. Mohammadi's arrest were not in possession of a valid arrest warrant issued by a judicial official, but instead showed a letter stating that they had the authority to search Ms. Mohammadi's house and to arrest her. Ms. Mohammadi has been permitted only one phone call to relatives and has been held incommunicado since then in Evin Prison.

1114. On 12 June 2010, Mr. Abdolreza Tajik was arrested as he was leaving his office, after being summoned by the Ministry of Intelligence in Tehran. Mr. Tajik has been held incommunicado in Evin Prison since then. Mr. Abdolreza Tajik was prevented from leaving the country in February 2009, on his way to attend a seminar in Spain. He was arrested on 14 June 2009 and released on bail after 45 days in detention. He was rearrested again in December 2009.

1115. Ms. Narges Mohammadi was allegedly prevented from leaving the Islamic Republic of Iran in May 2010, when she was about to attend a conference in Guatemala. She has been reportedly regularly summoned for interrogation and advised to stop her work with the DHRC.

1116. The Defenders of Human Rights Centre has been closed since December 2008.

1117. Concern was expressed that the arrest and incommunicado detention of Ms. Narges Mohammadi and Mr. Abdolreza Tajik may be in connection with their peaceful activities in defence of human rights, in particular their work in the Defenders of Human Rights Centre.

Urgent appeal

1118. On 1 July 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government concerning **Majid Tavakkoli**, aged 24, member of the Islamic Students' Association at Amir Kabir University.

1119. According to the information received, Majid Tavakkoli was first arrested on 7 December 2009 after he gave a speech at a student demonstration at Amir Kabir University in Tehran. He ended a seven-day hunger strike in protest for being placed in solitary confinement when he was transferred to the general section of Evin Prison on 29 May 2010. However, on 22 June, he was transferred to Section 350, where the conditions are believed to be poor, with overcrowded cells, inadequate food and sanitary facilities. Mr. Tavakkoli suffers from a respiratory condition which has worsened during his detention, and for which he has not received medical attention.

1120. Mr. Tavakkoli was beaten upon arrest. Additionally, on 8 December 2009, Fars News Agency published pictures of Mr. Tavakkoli wearing women's clothing, indicating he had been wearing them to avoid arrest. However, it is alleged that he was forced to wear the clothes to humiliate him.

1121. His trial took place in January 2010, but his lawyer was not allowed to attend. Mr. Tavakkoli was sentenced to five years imprisonment for “participating in an illegal gathering”, one year for “propaganda against the system”, two years for insulting the Supreme Leader” and six months for “insulting the President”. He was also banned from participating in political activities or leaving the country for five years.

Urgent appeal

1122. On 12 August 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government concerning Mr. **Abdolreza Tajik**, a journalist and member of the Association of Human Rights Defenders. Mr. Tajik was the subject of previous communications sent on 23 June 2010, 7 January 2010 and 10 July 2009.

1123. According to the new information received, Mr. Abdolreza Tajik was arrested on 11 June 2010 by security officers. It is the third time he has been arrested following the 2009 presidential elections in Iran. Since the arrest, Mr. Tajik has been held in solitary confinement and subjected to torture and ill-treatment, in order to extract a confession. It is also believed that Mr. Tajik was “defiled” in the presence of Tehran’s deputy prosecutor. Although Mr. Tajik’s family filed a complaint with the Tehran Prosecutor-General, no action has been taken to investigate the allegations of torture and ill-treatment. Additionally, Mr. Tajik has not been allowed to meet with his lawyer and was only granted one meeting with his family.

Urgent appeal

1124. On 27 August 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal to the Government concerning the situation of Ms. **Shiva Nazar-Ahari**, a member of the Committee of Human Rights Reporters (CHRR), an Iranian human rights non-governmental organization. Ms. Shiva Nazar-Ahari has been the subject of joint urgent appeals sent by several Special Procedures mandate-holders on 22 February 2010 and 10 September 2009. We regret that both urgent appeals are left unanswered as of today.

1125. According to the information received, since 20 December 2009, Ms. Shiva Nazar-Ahari has reportedly been detained and charged with moharebeh (enmity with God), under article 186 of the Iranian Penal Code, which potentially carries the death penalty, as well as with “assembly and collusion to commit a crime” (article 610) and “propaganda against the Regime” (article 500). Ms. Shiva Nazar-Ahari and her organization are reportedly accused of contacting the People’s Mojahedin Organization of Iran, a group which is allegedly banned in the country.

1126. Ms. Shiva Nazar-Ahari has further been charged with “causing unease in the public mind through writing on the CHRR’s website and other sites” and “acting against national security by participating in [anti-government] demonstrations on 4 November 2009 and 7 December 2009”. Ms. Shiva Nazar-Ahari denies participating in these demonstrations as she had allegedly been working on those days.

1127. Ms. Shiva Nazar-Ahari is currently being tried in Branch 26 of the Revolutionary Court in Tehran. The next hearing will take place on 4 September 2010.

1128. It is reported that Ms. Shiva Nazar-Ahari has been held in solitary confinement, in a cage-like cell which prevents her from moving her arms and legs. In addition, she has limited access to her family.

Response of the Government

1129. In a letter dated 9 February 2011, the Government replied to the urgent appeal sent on 27 August 2010 as follows.

1130. With regard to Ms. Shiva Nazar-Ahari's case, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to reports, Ms. Nazar-Ahari, has been charged with endangering national security, supporting the MKO terror group and disrupting public order. Ms. Nazar-Ahari was arrested in May 2009 and released on bail in September 2009.

1131. She was put on trial on 3 September 2010 at branch 26 of Tehran Province's Court of Revolution. Mr. Mohammad Sharif and Ms. Afrouz Moghzi defended Ms. Nazar-Ahari at her trial. The court – in correspondence with Articles 46, 47, 186, 190, 191, 193, 194, 610, 618 and paragraph 5 of Article 22 of the Islamic Penal Code – later issued verdict No.288 dated 4 September 2010.

1132. Ms. Nazar-Ahari's sentence entails:

- Two years of Ta'ziri (in Islamic jurisprudence/Fiqh this term refers to sentences which carry variable levels of punishment, as determined by law and judge respectively) imprisonment for conspiring against national security.
- Six months of Ta'ziri imprisonment and a 400,000 Toman pecuniary fine (substitute for 74 Ta'ziri lashes) for disrupting public order.
- Three and a half years of imprisonment for "Maharebeh" (enmity to God), in the city of Eizeh in Khouzestan Province.

1133. The verdict was appealed and subsequently the charge of "association and conspiracy against the system" was quashed by the appellate court. The court also reduced her imprisonment sentence to four years and changed her place of imprisonment from Eizeh prison to Karaj prison.

1134. Records show that back in 2003 Ms. Nazar-Ahari had been given a two year suspended prison sentence for engaging in propaganda against the state. This background is indicative of Ms. Nazar-Ahari's intention to continue her illegal activities against the Islamic Republic of Iran.

1135. Similar to other prisoners, the Prisons Organization provides care – including medical attention – to Ms. Nazar-Ahari. She also has access to her defense counsel and has received visits from her family.

Urgent appeal

1136. On 24 September 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding Mr. **Saeed Ha'eri** and Ms. **Shiva Nazar Ahari**, members of the Committee of Human Rights Reporters, an organization which campaigns against human rights violations, including abuses against women, children, prisoners, workers and others. Ms. Nazar Ahari and Mr. Ha'eri were the subject of urgent appeals sent on 22 February 2010 and 27 August 2010.

1137. According to the information received, Ms. Shiva Nazar Ahari and Mr. Saeed Ha'eri were arrested on 20 December 2009, together with another member of the Committee of Human Rights Reporters. They were both released on bail pending their trial.

1138. On 18 September 2010, Ms. Ahari's sentence of 74 lashes for "disturbing public order" was commuted to a fine. However, she was also sentenced to three years'

imprisonment for “moharebeh” (enmity against God), two years for “gathering and colluding to commit a crime” and six months for propaganda against the system”, which she must serve at Izeh Prison. It is not clear if Izeh Prison has existing facilities for women. Mr. Ha’eri was sentenced by Branch 26 of the Revolutionary Court to two and a half years’ imprisonment and 74 lashes for “disturbing public order” and “gathering and colluding with intent to harm state security”. The convictions and sentences of both Mr. Ha’eri and Ms. Ahari will be appealed.

1139. Concern was expressed that the arrests and convictions of Mr. Saeed Ha’eri and Ms. Shiva Nazar Ahari might be directly related to their work in defence of human rights. Further concern was expressed for the physical and psychological integrity of Ms. Ahara and Mr. Ha’eri if his sentence is implemented.

Response of the Government

1140. In a letter dated 17 February 2011, the Government replied to the urgent appeal sent on 24 September 2010 as follows.

1141. In connection with Mr. Saeed Ha’eri’s case, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to reports, Mr. Ha’eri was arrested on 20 December 2009 on charges of assembly, conspiracy against the state and disruption of public order.

1142. Upon completion of preliminary investigations, on 10 March 2010, Mr. Ha’eri was released on bail.

1143. The accused was later put on trial. After the completion of all relevant legal procedures – including hearing the defense mounted by Mr. Ha’eri’s attorney, Mr. Mohammad Ha’eri (father of the accused) – Branch 26 of Tehran’s Court of Revolution, through verdict Number 288 dated 4 September 2010, found the accused guilty.

1144. On the basis of articles 610 and 618 of the Islamic Penal Code, Mr. Saeed Ha’edi was sentenced to serve a 2 year prison sentence – to include his earlier detention – for assembly and conspiracy against the security of the state and six months of Taziri (in Islamic jurisprudence/Figh’h this term refers to sentences which carry variable levels of punishment, as determined by law and judge respectively) imprisonment as well as an additional 74 lashes for disrupting public order.

1145. The above verdict is subject to appeal.

Urgent appeal

1146. On 29 September 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the government regarding the situation of Mr. **Emadeddin (Emad) Baghi**, founder of the Centre for the Defence of Prisoners' Rights, laureate of the 2009 Martin Ennals Award for Human Rights Defenders, and also laureate of the 2005 Human Rights Prize of the French Republic. Mr. Baghi was the subject of an urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyer; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences on 7 January 2010.

1147. According to the information received, on 21 September 2010, after being summoned by Branch 1057 of the Tehran Revolutionary Court regarding the closure in 2009 of the Centre for the Defence of Prisoners' Rights, Mr. Emadeddin (Emad) Baghi was

reportedly informed that on 17 August 2010 he had been sentenced by the Branch 26 of the Revolutionary Court to six years of imprisonment on charges of “propaganda against the system” and “colluding against the security of the regime”, allegedly because of an interview with the late Grand Ayatollah Hussein-Ali Montazeri.

1148. In relation to the above mentioned interview, Mr. Emadeddin (Emad) Baghi has reportedly been arrested for six months on 28 December 2009, spending five of them in solitary confinement, while suffering from heart and breathing problems and severe back pain. He was reportedly released on 23 June 2010 on health grounds, after paying a bail of about 200,000 dollars.

1149. It is reported that Mr. Baghi is to serve a total of seven years in prison, since on 27 July, he was sentenced by the Branch 15 of the Revolutionary Court to one year of prison and five years of deprivation of civil activities, regarding a different case for heading the Centre for the Defence of Prisoners' Rights. Reportedly, to date, he remains under provisional release.

1150. Concern was expressed that the convictions against Mr. Emadeddin (Emad) Baghi is a result of his legitimate human rights activities, in a context of repeated harassment against human rights lawyers and activists in Iran.

Response from the Government

1151. As was explained earlier in our response to some of the communications of rapporteurs on Mr. Emmadin Baghi, in the Islamic Republic of Iran charges against individuals are investigated and tried on the basis of law, regardless of the individual's social and political status.

1152. Regrettably, Mr. Baghi used improper and unacceptable activities. He was arrested and tried on the charges of waging propaganda against the Islamic Republic of Iran by propagating lies for the purpose of disturbing public mind. He was indicted by the Islamic Revolution Court of Tehran and after exhausting all legal remedies and formalities he was sentenced to one year in prison. His trial was on the basis of indictment 6/83/327 dated 12/7/1383 and in accordance with article 500 of the Penal Code. This article in the Penal Code stipulates that any person who acts against the Islamic Republic of Iran or wages propaganda in the interest of groups or organization that oppose Islamic Republic of Iran shall be sentenced from three months to one year in prison. The sentence was appealed by his defence lawyer, Mr. Saleh Nikbakht. The appellate court upheld the sentence by the lower court.

1153. This sentence by the court was enforced on 22/7/1396, and from 27/10/1386 to 27/1/1387 (three full months) and again from 13/3/1387 (for two weeks) and from 25/6/1387 to 5/7/1387 (two weeks), he was sent outside the prison for sick leave.

1154. Altogether, he has used four months of sick leave that is counted as part of his prison term. He repeated the same offence and was summoned by Branch 1 of Tehran Dadsara in the month of Azar 1386 and his case is presently being reviewed by Branch 15 of Tehran Criminal Court. No verdict has been issued yet.

1155. He has two defence lawyers on this case, Mr. Keshavarz and Mr. Tabatabaie.

Urgent appeal

1156. On 7 October 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding the sentencing of Mr. **Isa Saharkhiz**, a pro-reform movement journalist and member of the

Association of Iranian Journalists and of the Central Council of the Committee to Protect Press Freedom, and Mr. **Hossein Derakhshan**, a blogger with dual Iranian-Canadian citizenship who posted instructions on his blog in Persian on how to set up a blogging site and begin writing online comments.

1157. Concerns regarding the case of Mr. Isa Saharkhiz have been communicated to the Government on numerous occasions, including through urgent appeals dated 11 February 2010 and 1 April 2010. Mr. Isa Saharkhiz's case has also been considered by the Working Group on Arbitrary Detention and has been deemed arbitrary in its opinion adopted on 6 May 2010 (Opinion No.8/2010).

Response from the Government

1158. In a letter dated 7 October 2010, the Government provided information regarding the case of Mr. **Isa Saharkhiz** as follows.

1159. Mr. Isa Saharkhiz was in charge of foreign news service of one of the presidential candidates (Mr. Karoobi) and played an effective role after the election in propagating fictitious news, attributing fabricated allegations to high-ranking officials of the country, disturbing public mind and provoking unrest. He was arrested on the basis of a warrant, and after completion of investigations and collection of evidence, the investigating judge on 3 July 2009 remanded the accused in light of previous records of commission of numerous offences.

1160. On 14 December 2009 an indictment was issued charging him for his actions in waging propaganda against the Islamic Republic of Iran, insulting the high-ranking officials of the country and disturbing public mind, his case was sent to the court – Branch 15 – and the first hearing was held on 18 July 2010. He has four defense lawyers – Ms. Nasim Ghnavi, Sepanta Jafari, Nasrin Sotoodeh and Mr. Mohammed Reza Afghahi. Despite the factious claim concerning his lawyers not being able to have access to his dossier, according to our inquiries his defense lawyer – Mr. Faghihi – came to the court and read his case on 2 Esfand 1388 and 14 Farvardin 1389. Moreover, the lawyers met their client a number of times. Mr. Sharkhiz is serving his sentence in the general cell of Evin Prison and is in good health. In addition to having telephone contacts, his family visits him weekly. All claims concerning mistreatment of Mr. Sharkhiz in prison is rejected.

1161. In a letter dated 16 February 2011, the Government replied to the urgent appeal sent on 7 October 2010 concerning the case of Mr. **Hossein Derakhshan** as follows.

1162. In connection with the conviction of Mr. Hossein Derakhshan, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has contacted all pertinent judicial authorities and courts. According to reports, Mr. Hossein Derakhshan, son of Hassan, has been charged with:

1. Insulting Islamic sanctities (Hazrat Sedigh Tahereh, PBHU).
2. Insulting the Leaders of the country.
3. Distribution of pictures and materials intended to mock sanctities.
4. Statements to the same effect.
5. Distribution of obscene and pornographic material in cyberspace.
6. Insults against the President of the Islamic Republic of Iran.
7. Propaganda against the system of the Islamic Republic of Iran.
8. Cooperation with hostile states (namely the Zionist regime) by participating in anti-revolutionary conferences.

9. Establishment of anti-revolutionary media.

1163. Mr. Derakhshan was arrested on 3 November 2008. Sometime later his case was brought before Branch 15 of Tehran's Court of Revolution. During his trial, Mr. Derakhshan was defended by Dr. Mahdavi – his attorney. After the completion of the trial, the Court of Revolution found Mr. Derakhshan guilty and – based on articles 7, 47, 500, 508, 513, 514 and 609 of the Islamic Penal Code and article 10 of the illegal audio and visual activities act – condemned (verdict No.D/T/16192/88) the accused to 5 years of imprisonment in connection with offenses 1 and 3, also 5 years of imprisonment in connection with offenses 1 and 3, also 5 years of imprisonment for offense 2, as well as 1 year of imprisonment for offense 4, also 6 months of imprisonment for offense 5, and 1 year of imprisonment for offense 6, and an additional 10 years of imprisonment for offense 7.

1164. Mr. Derakhshan was also prohibited from involvement in the media (print and cyberspace) and the activities of political parties. He was also ordered by the court to deposit all monies received into a government account.

1165. Mr. Derakhshan and his attorney have the right to appeal the sentence.

Urgent appeal

1166. On 22 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on violence against women, sent an urgent appeal regarding the detention of Ms. **Fatemeh Masjedi** and Ms. **Maryam Bidgoli**, members of the "One Million Signatures Campaign" which purpose is to collect signatures in support of amendments of laws that discriminate against women.

1167. It was noted that members of the "One Million Signatures Campaign" have been the subject of previous communications sent to the Government, the most recent of which was sent on 28 December 2009, on behalf of the Working Group on Arbitrary Detention; Special Rapporteur on violence against women, its causes and consequences; and Special Rapporteur on the situation of human rights defenders.

1168. According to information received, Ms. Masjedi and Ms. Bidgoli were arrested on 7 May 2009, for peacefully gathering signatures in the framework of the "One Million Signatures Campaign". Reportedly, they were released on bail after two weeks in detention. However, following a court hearing on 4 August 2010, Ms. Masjedi and Ms. Bidgoli were found guilty of "spreading propaganda against the system in favour of a feminist group [the Campaign] and for publication of materials in support of a feminist group opposed to the system", and sentenced to one year's imprisonment. On 7 December 2010, this sentence was reduced to six months following a ruling by a court of appeal in Qom province.

1169. On 29 December 2010, both Ms. Masjedi and Ms. Bidgoli were summoned to report within 3 days to prison officials in Qom to begin serving the six-month prison sentence, but reportedly they remained free after further appealing their convictions and sentences. On 28 January 2011, Ms. Masjedi was once again arrested for peacefully collecting signatures in support of the "One Million Signatures Campaign", and is currently in an unknown place of detention. Ms. Bidgoli is currently free but is fearful that she might be detained at any time.

1170. Concern was expressed that the arrest and detention of Ms. Madjedi and Ms. Bigdoli may be directly related to their work in defense of human rights. More generally, further concern was also expressed about the consideration of the "One Million Signatures Campaign" as a "group opposed to the system", which places all members of the campaign in danger.

Observations

1171. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 22 March 2011, and to eight communications sent earlier in 2010, and six in 2009. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

1172. The Special Rapporteur remains deeply concerned about the situation in the Islamic Republic of Iran, in particular with regard to allegations of widespread use of torture and ill-treatment in places of detention against human rights defenders, bloggers, journalists and individuals who have expressed critical views. Additionally, he is disturbed by reported practice of detention of such individuals in unknown locations and incommunicado detention, as well as alleged restrictions to access a lawyer.

1173. Moreover, the Special Rapporteur is gravely concerned about the use of vaguely worded provisions in the Islamic Penal Code which restrict the right to freedom of expression in contravention of international human rights standards, such as “enmity against God”, “propaganda against the system”, “colluding against the security of the regime”, “insulting Islamic sanctities”, “insulting the Leaders of the country”, “insults against the President of the Islamic Republic of Iran”, “distribution of pictures and materials intended to mock sanctities”, “cooperation with hostile states by participating in anti-revolutionary conferences”, and “establishment of anti-revolutionary media”. The Special Rapporteur underscores that none of these constitute legitimate grounds for restricting the right to freedom of expression under international human rights law, particularly given that breaches of such provisions carry disproportionate sentences, including lashing and imprisonment.

1174. The existence and application of such laws creates a significant chilling effect on the right to freedom of opinion and expression, and the Special Rapporteur urges the Government of the Islamic Republic of Iran to repeal such provisions and to promote a climate of tolerance where individuals can express diverse views without risk to their physical and psychological integrity or acts of harassment, intimidation or fear of persecution.

Iraq

Allegation letter

1175. On 22 October 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an allegation letter concerning the **rising trend of fatal attacks on journalists and media personnel** in Iraq, including the most recent killings of Mr. **Riad Al-Saray**, television presenter of Al-Mosuliyah television channel, Mr. **Safaa Al-Dine Abdul Hameed**, television presenter of Al-Iraqiya television channel, and Mr. **Tahrir Kadhim Jawad**, freelance cameraman and former editor of the Al-Karma weekly newspaper.

1176. According to information received, on 7 September 2010, at around 6.00 a.m., Mr. Riad Al-Saray was killed when a group of unidentified gunmen opened fire on his car in western Baghdad. The police have reportedly confirmed that the gunmen used silencers in the attack. Mr. Al-Saray had hosted programmes that sought to reconcile Shiites and Sunnis in Iraq after joining Al-Iraqiya television channel in 2005, which is part of the State-run Iraqi Media Network. At least 14 other staff of the Iraqi Media Network have reportedly been killed since 2003.

1177. The following day, on 8 September 2010, at around 8.00 a.m., Mr. Safaa Al-Dine Abdul Hameed was shot dead in front of his house in Mosul, in the northern province of Ninawa, by gunmen firing from a speeding car. Mr. Abdul Hameed had worked less than a year at Al-Mosuliya, a private channel that was launched in 2006 and broadcasts in northern Iraq. He had hosted a programme called “Our Mosques”, which detailed the history of religious sites in Mosul.

1178. On 4 October 2010, Mr. Tahrir Kadhim Jawad died immediately after a bomb attached to his car exploded in the city of Garma in Anbar province. He was reportedly intending to drive to Baghdad to deliver footage when the bomb exploded.

Urgent appeal

1179. On 11 November 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding the situation of Mr. **Ayad Muayyad Salih**, a human rights defender working with the Iraqi Institution for Development, a local non-governmental organization active in documenting and reporting human rights violations by the Iraqi army in Nineveh and Mosul. He is also an alumni of the Canadian non-governmental organization Equitas’ CIDA-funded project, “Human Rights Education: A Pathway to Building a Human Rights Culture in Iraq, the Middle East and North Africa”.

1180. We would also like to draw the attention of your Excellency’s Government to information we have received concerning the situation of Messrs. **Muayyad Salih Ahmed** and **Ra’ed Muayyad Salih**, the father and brother of Mr. Ayad Muayyad Salih respectively.

1181. According to the information received, on 26 October 2010, at 3:30 a.m., the house of Mr. Ayad Muayyad Salih in Al-Faysaleya quarter of Mosul city was raided by members of the Iraqi military, who came to arrest him. However, Mr. Ayad Muayyad Salih was away at that time, attending a conference organized by the Human Rights Centre of Nottingham University in Erbil City.

1182. Shortly afterwards, Messrs. Muayyad Salih Ahmed and Ra’ed Muayyad Salih were arrested and taken to an undisclosed location, reportedly to force Mr. Ayad Muayyad Salih to surrender. Their whereabouts remain unknown as of today.

1183. It is reported that Mr. Ayad Muayyad Salih went into hiding, fearing he would be arrested.

1184. Serious concerns were expressed that the attempt to arrest Mr. Ayad Muayyad Salih, and the subsequent arrest and detention of Messrs. Muayyad Salih Ahmed and Ra’ed Muayyad Salih, may be related to Mr. Ayad Muayyad Salih’s legitimate activities in defence of human rights. In view of the incommunicado detention of Messrs. Muayyad Salih Ahmed and Ra’ed Muayyad Salih, further concerns were expressed for their physical and psychological integrity.

Observations

1185. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to his communications dated 22 October 2010 and 11 November 2010. The Special Rapporteur considers responses to his communications an important part of cooperation by Governments with his mandate, and urges the Government of Iraq to respond to the concerns raised in the aforementioned communication.

1186. Moreover, the Special Rapporteur remains deeply concerned about the situation of journalists in Iraq. According to the Committee to Protect Journalists, 149 journalists have been killed in the country since 1992, with complete impunity in 93 cases.⁶⁷ The Special Rapporteur urges the Government to ensure the safety and security of journalists, and to undertake immediate, impartial and effective investigations into the deaths of journalists and bring the perpetrators to account.

Israel

Allegation letter

1187. On 20 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an allegation letter regarding concerning the situation of Mr. **Omar Alaaeddin** and Mr. **Mahmoud Zwahre**. Mr. Alaaeddin is a Palestinian human rights activist who has been organizing and participating in demonstrations in the village of Al Ma'asara (West Bank) in protest of human rights violations allegedly committed by the Israeli authorities and the Israeli armed forces. Mr. Mahmoud Zwahre is the mayor of Al Ma'asara, and a co-organizer of demonstrations in Al Ma'asara.

1188. According to the information received, on 14 March 2010, Mr. Alaaeddin was reportedly beaten and arrested by Israeli soldiers at the Container checkpoint in the West Bank. He was detained incommunicado in the Israeli Russian Compound jail in Jerusalem and interrogated in relation to his participation in demonstrations and for having allegedly assaulted one Israeli soldier who arrested him. Mr. Alaaeddin reported that he was beaten and subjected to electro-shocks with a taser while in detention. He further alleged that despite his repeated requests, he did not receive any medical treatment during his detention. Furthermore, Mr. Alaaeddin denied having assaulted Israeli soldiers at the Container checkpoint.

1189. On 21 March 2010, Mr. Alaaeddin was brought before a judge who reportedly ordered his release for lack of evidence in relation to the assault of Israeli soldiers.

1190. This arrest follows the one of Mr. Zwahre, who was allegedly arrested at the Container checkpoint, beaten and detained by Israeli forces on 2 March 2010.

1191. Concern was expressed that the arrests and detentions of Mr. Alaaeddin and Mr. Zwahre might be directly related to their legitimate work in defense of human rights, in the exercise of their right to freedom of expression. More generally, further concern was expressed for the physical and psychological integrity of the organizers of demonstrations in Al Ma'asara.

Response of the Government

1192. In a letter dated 30 March 2011, the Government responded to the communication sent on 2- April 2010.

1193. **Mr. Omar Alaaeddin** was interrogated in the "Maale Edomim" police station on 15 March 2010 for alleged assault of a policeman in duty. The information gathered in the investigation was transferred to the military prosecution for further analysis. On 7 September 2010 the case was closed and no indictment given.

⁶⁷ "149 Journalists killed in Iraq since 1992", Committee to Protect Journalists, <http://cpj.org/killed/mideast/iraq/>.

1194. During his interrogation Mr. Alaaeddin reported that he was beaten by a Border-Control Policeman. According to set rules and procedures, the complaint was transferred to the police investigations department. The department sent a letter to the complainant requesting that he arrives to file a complaint as required. Since the complainant did not contact the police investigations department, the file was closed on 26 July 2010.

1195. Mr. Alaaeddin did not complain of being subjected to electro-shocks during detention.

1196. We further request to note that all acts of torture, as defined in Article 1 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are criminal acts under Israel's legislation. In addition, all forms of torture or other cruel, inhuman or degrading treatment or punishment are prohibited by Israel's *Basic Law: Human Dignity and Liberty*.

1197. Moreover, in C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et. al.* (4.5.06), the Supreme Court held that "...the nature and extent of the unacceptable methods of interrogation included today in the scope of 'harming the human character of the interogatee' may wider than in the past. This, in light of the interpretative impact of the *Basic law* and considering the international contractual law that Israel is a party to."

1198. In 2009, Israel's High Court of Justice rejected a petition claiming that the Government and the Israeli Security Agency (ISA) disregarded the High Court of Justice ruling in *H.C.J. 5100/94 The Public Committee against Torture in Israel v. The State of Israel*. The Court found no legal or factual basis for this claim.

1199. We request to note that in 2006 Mr. Alaaedin was convicted, upon his confession and as part of a plea bargain, of membership and activity in a terrorist organization, attempting to purchase weapons and conspiring to intentional killing. He was sentenced to 44 months imprisonment.

1200. We were unable to identify the complainant Mr. **Mahmoud Zwahre** according to the information in the report. We would appreciate further details of the complainant and the incident reported, including an identity number of Mr. Zwahre, in order to inquire into the allegations in the report.

Urgent appeal

1201. On 21 May 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the government concerning the situation of Mr. **Ameer Makhoul**. Mr. Makhoul, Palestinian Arab citizen of Israel, is the General Director of Ittijah (the Union of Arab Community-Based Associations), a network of Arab NGOs in Israel with special consultative status with the UN Economic and Social Council. He is also the Chairman of the Public Committee for the Defense of Political Freedom where he monitors the restrictions on the political freedoms of the Arab citizens in Israel.

1202. According to the information received, on 8 January 2010, 10 days after Mr. Makhoul gave a speech in Haifa protesting the ongoing attack on Gaza, Israeli police allegedly summoned him for an interrogation. Mr. Makhoul refused, and was allegedly forcibly escorted by two ISA officers to a police station where he was interrogated for three hours.

1203. On 21 April 2010, an administrative order signed by Israeli Interior Minister Eli Yishai allegedly prohibited Mr. Makhoul from traveling outside Israel for a period of two months based on Article 6 of the Emergency Regulations of 1948.

1204. On 6 May 2010, 16 Israeli police officers accompanied by agents from the Israeli General Security Services (GSS) allegedly raided Mr. Makhoul's home in Haifa and arrested him pursuant to an arrest order dated 23 April 2010 citing security reasons as the grounds for his arrest. It is alleged that the police searched his house and confiscated documents, maps, the family's four mobile phones, the laptops of Mr. Makhoul and his wife, the hard drives from his daughters' desktop computers, a camera and a small tape recorder. During the house search, the police allegedly violently restrained Mr. Makhoul's wife.

1205. It is alleged that a few hours after the arrest, Mr. Makhoul's wife received a phone call from someone who identified himself as representative from the "international terrorism" section of Petah Tikva interrogation center. She was then informed that her husband was being detained at the Petah Tikva interrogation center for questioning. The same day, a detention hearing on Mr. Makhoul's case was reportedly held at the Magistrates' Court in Petah Tikva and his detention was extended for six days. During this time, Mr. Makhoul was reportedly held incommunicado and had no access to a lawyer.

1206. On 17 May 2010, Mr. Makhoul's detention was allegedly further extended until 20 May by the Petah Tikvah Magistrate Court. It is alleged that, for the first time since his arrest, Mr. Makhoul was allowed to attend the hearing and granted access to his lawyers.

1207. It is further alleged that, Mr. Makhoul, who has been subjected to extensive interrogations, is suffering for exhaustion and pains in the head.

1208. Concern was expressed that the arrest and incommunicado detention of Mr. Makhoul might be directly related to his legitimate work in defense of human rights, in the exercise of his right to freedom of expression. Further concern was expressed about his physical and psychological integrity.

Response from the Government

1209. In a letter dated 28 July 2010, the Government responded to the communication sent on 21 May 2010. Mr. Amir Makhoul was arrested on May 6, 2010, and on May 27, 2010 an indictment was filed against him for the following offences.

1210. Details on the indictment were provided by the Government. According to the indictment, the defendant knowingly had contact with foreign agents of the Hezbollah terrorist organisation, without reasonable explanation, and while he is aware that the abovementioned agents dealt with or were sent to collect confidential information or other actions that may harm state security on behalf of a terrorist organisation or linked to it or acting on its behalf. In doing so, the defendant conspired to assist the enemy, the Hezbollah terrorist organisation, in its war against Israel with the intent to do so, by transmitting information with the intention that they will result in enemy hands or knowing that they might reach enemy hands. In addition the defendant transmitted information and confidential information while not being authorised to do so and with the intent of harming State security.

Urgent Appeal

1211. On 8 November 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, sent a communication to the government concerning the sentencing of Mr. **Abdallah Abu Rahma**. Mr. Abu Rahma is a secondary-school teacher and head of the Bil'in Popular Committee against the Wall, an organization that carries out public demonstrations against the Israel security barrier and wall in the West Bank. This organization was awarded the International League for Human Rights' Carl Von Ossietzky Medal in 2008 for its work in defense of human rights.

1212. According to the information received, on 11 October 2010, Mr. Abdallah Abu Rahma was sentenced to one year of imprisonment and fined 5,000 New Israeli Shekels by an Israeli Military Court, after having been found guilty of incitement and organizing illegal demonstrations. The charges allegedly relate to Mr. Abu Rahma's activities organizing peaceful protests against the Israeli-built separation wall in the village of Bil'in. In addition, Mr. Abu Rahma was reportedly given a six-month suspended sentence in case he might carry out similar actions again in the future. Initial charges against Mr. Abu Rahma for alleged stone-throwing and arms possession were apparently withdrawn. The latter was reportedly linked to Mr. Abu Rahma's having collected used tear-gas canisters and bullet cases relating to shots at demonstrators by Israeli security agents, in order to document the level of force directed at demonstrators.

1213. The demonstrations against the wall, which Mr. Abu Rahma was involved in organizing, are reportedly non-violent and consist of Israeli, Palestinian, and foreign participants. It is further reported that Military Order 101, which applies only to the Occupied Palestinian Territory, was evoked in order to convict Mr. Abu Rahma. This Order criminalizes attempts to influence public opinion, orally or otherwise, "in a manner that is liable to harm public order or public safety", as well as other acts such as displaying or waving flags. The prosecution allegedly requested that the judge make an example of Mr. Abu Rahma by handing down a harsh sentence, with the objective of deterring others from participating in such public demonstrations.

1214. Concern was expressed that the sentencing of Mr. Abu Rahma may be related to his legitimate human rights activities.

Response from the Government

1215. In a letter dated 26 November 2010, the Government responded to the communication sent on 8 November 2010. In 2005, three criminal indictments were filed against Mr. Abdallah Abu Rahma for disruption of public order, interference with an IDF soldier in performing his duty and incitement and breach of curfew. Mr Abu Rahma was released from detention upon certain conditions for the duration of his trial. On 20 July 2010, Abu Rahma was convicted of the above offences and sentenced to two months imprisonment.

1216. While breaching the conditions set by the court upon his abovementioned release, on December 10, 2009, Mr. Abu Rahma was arrested again, this time for committing additional offences. An indictment was filed against him for incitement; organisation and participation in an unauthorised demonstration aimed, *inter alia*, to disrupt public order, stone throwing; and the possession of unlicensed ammunition. Mr. Abu Rahma was arrested until the completion of the proceedings.

1217. On August 24, 2010, the Court convicted Mr. Abu Rahma for incitement and for organising and participating in an unauthorised demonstration. Mr. Abu-Rahma was acquitted of stone-throwing and possession of unlicensed ammunition. The conviction was based on Articles 1, 3, 7(a), 10 of Military Order No. 101 (1967).

1218. On October 11, 2010, the Court sentenced Abu Rahma to a total of 12 months imprisonment conditional imprisonment and a NIS 5000 fine.

1219. Mr. Abu Rahma was convicted for his role in the "Bil'in in Popular Committee" or the "Fence Committee" which organises the weekly demonstrations in Bil'in against the construction of the security barrier since 2005.

1220. It should be mentioned that these demonstrations often turn violent and involve stone-throwing and violent acts against Israeli forces in the area. Abu Rahma was convicted for organisation of these events and for incitement before and during these events. The

judges thoroughly reviewed all evidence before them in an extensive judgement and all procedures were held in accordance with relevant legislation and orders.

1221. The violent actions of demonstrators in Bil'in are a constant threat to public order and security. Incitement to violence leads to actions that undermine peace and security and pave the way for violence and hatred.

1222. The military courts in the Judea and Samaria area act under the power of security legislation, which also guarantees the independence of the judges. All judges are jurists. All defendants have a right to retain private counsel, who are independent of the Israeli military system. In addition, it should be noted that all processes under the courts may be appealed to a Court of Appeals as well as ultimately reviewed in an appeals process by the High Court of Justice in Israel.

1223. The Court in its decision regard Abu Rahma addressed allegations raised by the Defendant relating to unfair trial and investigation practices. When these charges were found to have merit by the Court, they were taken into account, and accordingly, two charges were dropped, *inter alia*, for reasons of lack of sufficient investigation and lack of evidence. A great deal of testimony, however, was found to be unreliable, as several of the witnesses contradicted one another, while other witnesses were declared to be "hostile" due to meaningful inconsistencies in their testimonies during investigation and during trial.

1224. The maximum penalty for the offences that Abu Rahma was convicted of is 10 years imprisonment. In his sentencing, handed down on October 11, 2010, due consideration was given to aggravating as well as mitigating factors. Abu Rahma's leading role in the demonstrations and in society, his influence over the village people that was used for incitement to violence and his previous convictions and parole conditions which were violated called for a longer sentence. However, the court also took into account the fact that Abu Rahma's actions were sparked by a sense of injustice; the defendant's overall moral character; the fact that he has worked to promote peace, dialogue and co-existence; and the fact that the defendant is a teacher and a father. Taking into consideration all of the factors noted above, Abu Rahma was sentenced to a total of 12 months imprisonment, 6 months of conditional imprisonment (should he repeat these offenses in the following 5 years) and a NIS 5000 fine.

1225. Mr. Abu Rahma was represented by a lawyer in all the legal proceedings and court hearings. In addition an interpreter was present at the hearing.

1226. In a letter dated 15 February 2011, the Government provided additional information concerning the case of Mr. Abu Rahma.

1227. On 11 May 2011 an appeal decision was given in the case of Abdallah Abu-Rahme. The Defense appealed the convictions and the sentence, while the Prosecution appealed an acquittal from the criminal offense of stone-throwing and requested that the sentence be prolonged to a minimum of 18 months.

1228. The Court of Appeals thoroughly reviewed the claims of the defense and dismissed them except for a correction requested in the facts of the incident. The claims of the prosecution were also reviewed and the court ruled not to overturn the acquittal of Abu-Rahme for stone-throwing.

1229. The Prosecution's appeal on the sentence was granted. The Court of Appeals ruled that the actions and sayings of Abu-Rahme had a concrete designation, targeted at a concrete and clear audience that was ready to receive the message and to implement it immediately. Since the violent protests continue sentencing should be severe to deter future violations. However, since the exact scope of Abu-Rahme's actions is unclear (and there is no evidence of activity later than 2008) and since Abu-Rahme did not act in physical violence against the soldiers his sentence should be alleviated.

1230. The Court decided to prolong Abu-Rahme's sentence to a 16 month imprisonment (instead of 12 as he was sentenced in the Court of First Instance).

1231. As of January 2011, Abu-Rahme satisfied 13 months of his imprisonment.

Observations

1232. The Special Rapporteur thanks the Government for the detailed responses received to the communications sent on 20 April 2010, 21 May 2010, and 8 November 2010, and looks forward to receiving a response to his communication sent on 5 March 2010.

1233. The Special Rapporteur expresses his concern at reports received regarding increasing restrictions to the right to freedom of opinion and expression of human rights defenders working in Israel. He reiterates his appreciation for the invitation extended to him in 2009 by the Government of Israel to undertake a mission, and hopes that a mutually agreeable set of dates can be agreed upon in the near future.

Italy

Allegation letter

1234. On 6 July 2010, the Special Rapporteur sent a letter of allegations to the Government regarding the **draft law entitled "Progetto di Legge 1415: Norme in material di intercettazioni telefoniche, telematiche e ambientali"** (hereinafter "the draft law"), concerning regulations on electronic surveillance and eavesdropping for criminal investigations.

1235. According to information received, on 10 June 2010, the draft law, proposed by the Minister of Justice Mr. Angelino Alfano, was passed by the Senate with 164 votes in favour. Of a total of 323 senators, only 189 were in the room when the draft law was voted on, as the representatives of the opposition coalition had allegedly left the room in protest. The draft law is pending approval by the Chamber of Deputies and signature by the President before it becomes law. The Special Rapporteur conveyed his understanding that the draft law will be presented to the Chamber of Deputies on 27 July 2010.

1236. The Special Rapporteur noted that the draft law has been put forward due to concerns that currently, (1) magistrates and prosecutors are ordering too many wiretaps with little or no evidence of actual criminal wrongdoing and the media are publishing too many of the results before any judge or jury has had the chance to deliberate, and (2) such use of wiretapped information raises issues with regard to individuals' right to privacy and the right to be presumed innocent until proven guilty in accordance with the law. These concerns may be legitimate and the Special Rapporteur expressed that the publication of wiretapped information before the start of a trial may prejudice the outcome of a case. However, the Special Rapporteur raised two concerns in connection with his mandate.

1237. First, in the current version of the draft law, there is a provision that stipulates that anyone who is not accredited as a professional journalist and records any communication or conversation and publicizes them without the consent of the person involved can be sentenced to imprisonment for up to four years. The Special Rapporteur expressed his concern that the introduction of such a penalty will severely undermine all individuals' right to freedom of expression, including persons who are not professional journalists, as guaranteed in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

1238. Second, the Special Rapporteur expressed his concern that the draft law introduces a penalty of up to 450,000 Euros and 30 days in jail for publishers and a penalty of up to 10,000 Euros for journalists who publish the content of leaked wiretapped materials before the beginning of a trial. While noting that he is aware of the concerns regarding the publication by the media of leaked wiretapped information before the beginning of a trial, the Special Rapporteur expressed concern that the punishment envisaged in the draft law is disproportionate to the offence. In this regard, the Special Rapporteur referred to the principle enunciated, *inter alia*, by the Human Rights Council in its Resolution 12/16, which calls upon all States to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law. In addition, these provisions may hamper the work of journalists to undertake investigative journalism on matters such as corruption, particularly given the fact that the period until the preliminary hearing in Italy varies between three to six years, in some cases extending to ten years.

1239. Given these concerns, the Special Rapporteur urged the Chamber of Deputies to refrain from adopting the current draft law, and to engage in meaningful dialogue with all stakeholders, in particular journalists and media associations, to ensure that their concerns are taken into account. The Special Rapporteur also expressed his readiness to provide technical assistance regarding the draft law to ensure that it is in compliance with international human rights standards on the right to freedom of opinion and expression.

Response from the Government

1240. In a letter dated 3 September 2010, the Government sent a letter in response to the communication sent on 6 July 2010, as follows.

1241. First of all, it has to be underlined that the Draft Law in question is currently under discussion in the Italian Parliament, where all opinions are democratically duly reflected. Subsequently, the original text, to which you make reference, is the subject of a thorough and substantial debate among the different political forces, with several substantial amendments being introduced. According to the Italian Constitution the Draft Law will be final only once approved in the same text by both Chambers and promulgated by the President of the Republic. We therefore regard as premature disputing at this stage on specific provisions; moreover, urging that the Parliament refrains from exercising its legislative function seems quite disrespectful of the parliamentary sovereignty in the name of the Italian people. A proper evaluation of the bill and its possible impact on fundamental rights should also include the full consideration of the overall Italian constitutional and criminal procedural framework, which of course could be done only in due course.

1242. As it generally happens on any question pertaining to the field of criminal procedure, the aim of the Draft Law is to strike a satisfactory balance between the interest for security of the society (in this case the interest of criminal investigations) and, on the other hand, the individual fundamental rights, namely the right to respect for private and family life and, in this specific case, the right to freedom of expression and information. It may be not needless to remind that these principles, set forth by the Italian Constitution consistently with International legal tools, have equal dignity in International Human Rights Law and cannot be considered separately. The government of Italy is traditionally committed, internally and internationally, to the promotion and protection of fundamental human rights.

1243. Interceptions of communications and conversations are forms of cover surveillance techniques placing obvious restrictions on the right to respect for private and family life (article 17 International Covenant; article 7 Charter of Fundamental Rights in the European Union and article 8 European Convention on Human Rights, the latter being the only enforceable legal tool, through the European Court for Human Rights). Among the

requirements set forth by the European Convention and elaborated by the European Court for national laws to comply with the right to privacy, stand specific conditions for the publication of the content of interceptions of communications and conversations. The main goal of the Draft Law is therefore to achieve an effective balance between the right to privacy of individuals whose conversations are recorded in the course of criminal investigations and the right to freedom of expression and information of the public (article 19 International Covenant; article 10 European Convention on Human Rights; article 11 Charter of Fundamental Rights in the European Union).

1244. In this context, it has to be pointed out that the Italian Government has brought in a specific amendment, in which the protection of individual privacy and that of the freedom of the press are further and fully harmonized. In particular, it has been stressed the principle that, in the course of investigations, the obligation of confidentiality concerning interceptions of communications and conversations can be overcome whenever the judge (customarily in a special hearing, in the presence of the parties in the proceedings) or the public prosecutor deem it particularly relevant.

1245. Therefore, the text of the Draft is in full compliance with article 10, paragraph 2, of the European Convention on Human Rights under which the exercise of some freedoms – including that of expression/information – “may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society (...) for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence...”. These are exactly the requirements that the Draft under consideration intends to meet with the goal of ensuring the protection of the secrecy of pleadings, as well as the privacy of subjects not connected with the investigation, and the freedom of the press.

1246. Within the framework of effective and full cooperation with the special procedures of the Council, under which Italy recalls that it has extended stranding invitations, Italian Authorities reassure the utmost consideration for this issue, remain seized of the matter and will be honored to provide further update upon your request.

Response from the Government to a communication sent earlier

1247. In a letter dated 20 May 2010, the government sent a letter in response to the communication sent on 1 March 2010 concerning the sentencing of Mr. **Roberto Malini** and Mr. **Dario Picciau**. Mr. Malini and Mr. Picciau are the co-presidents of the non-governmental organization “EveryOne Group” and work to promote the rights of persons belonging to minorities, including the Roma.

1248. From the reports of the State Police, on December 20, 2008, Mr. R.M and Mr. D. P. burst, during an identification check by police officers – activity falling within the exercise of public functions of the Police -, in a public square in the Municipality of Pesaro. The two persons under reference addressed the Police officers with specious slander and thus interrupted the performance of public service.

1249. In terms of reconstruction of events, it is noted that of the three foreigners under identification control by the Police, only one person was in possession of identification documents. Moreover, Judicial Authorities have reported that none of these foreigners has applied for asylum. It is also worth-noting that Mr. R.M. and Mr.D.P., once brought to the Police headquarters, apologized for their behaviour.

1250. By “penal decree of condemnation”, the gentlemen under reference were convicted under Article 340 of the penal code for the interruption of a public service. The police, being unable to fulfil their duty to identify the three foreigners, have not submitted any complaint, resulting in the dismissal of the offense of abuse, originally objected to Mr. R.M. and Mr. D.P.. Please also note that in the event that the offence under Article 340 is

ascertained the relevant criminal proceeding starts *ex officio*. This is not the case for the latter offence, namely that of abuse of public officer – mainly existing in the civil law tradition.

1251. As for the effective implementation of the principle of the fair trial, the Italian Authorities firmly deny that the gentlemen in question have been convicted without a trial. The above penal decree, which was issued on May 11, 2009 against the persons concerned, is envisaged under Article 459 of the Code of Criminal Procedure. This procedure responds to the need to deflate the backlog and workload of the judicial authorities only in the event that the situation meets strict law criteria. Besides this is activated upon request by the public prosecutor and released by the judge for preliminary investigations when there is a clear evidence of guilt.

1252. Under the given circumstances prescribed by law, it is therefore possible to apply such proceedings, which provide neither the preliminary hearing nor the trial in its ordinary form, but preserve its “rewarding nature¹”.

1253. Once issued this decree, the convicted person may, within 15 days, appeal it, with the specific ability to request or activate either the so-called immediate trial, or summary trial or plea bargain under Article 444 of the Code of Criminal Procedure.

1254. Such summary judgement does not affect the right of defence. Indeed, if the accused disagrees with such measure, s/he may in fact establish the normal criminal proceedings through opposition to the decree.

1255. In this case, the two defendants, through legal counsel, brought, on February 22, 2010, opposition to the penal decree, and requested the establishment of the hearing and thus the trial, in its ordinary form.

1256. In terms of results, it has to be noted that the persons under reference have been convicted under that decree to pay a criminal fine of 1,140.00 euro each, and not 2.100,00 euros.

1257. Last but not least, according to the Police report, it has not emerged that the owner of a Bar was there when the events under examination occurred. However, if any testimony is requested by the two defendants in the incoming trial, such evidence will be submitted, according to relevant law provisions and in due judicial course.

1258. For these reasons, Italian Authorities deem that in this specific case there has been no breach of the provisions of the International Covenant on Civil and Political Rights (ICCPR).

Observations

1259. The Special Rapporteur thanks the Government for reply received to his communication sent on 6 July 2010. However, the Special Rapporteur remains concerned about the situation of press freedom in Italy, and hopes that a mutually convenient set of dates to carry out a mission can be agreed upon in the near future.

Jordan

Allegation letter

1260. On 3 August 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegation to the Government concerning restrictions to the right to freedom of expression in the Hashemite Kingdom of Jordan, notably the trial of Mr. **Sufyan Aref Ahmad Tell**, journalist, and Mr. **Muwfaq**

Mohd Khalf Al Mahadin, columnist for the daily "Al-Arab Al-Yawm", as well as the banning of the media to report on allegations of corruption.

1261. According to information received, on 14 January 2010, Mr. Muwfaq Mohd Khalf Al Mahadin participated in a debate on the satellite television station Al Jazeera, during which he criticized the Hashemite Kingdom of Jordan's cooperation with the United States of America on security issues, while Mr. Sufyan Aref Ahmad Tell criticized the Hashemite Kingdom of Jordan's "military presence outside its borders" during a talk show on a local television station, Nourmina. On 9 February 2010, Mr. Sufyan Aref Ahmad Tell and Mr. Muwfaq Mohd Khalf Al Mahadin were ordered to appear at a court in Amman for questioning by the Prosecutor of the State Security Court, Mr. Yousef Faouri, following a complaint filed by retired military officers who accused them of insulting the Jordanian armed forces.

1262. When they appeared at the court with their lawyer on 10 February 2010, the Prosecutor ordered them to be held for 15 days at Al-Juweida prison, based on the following charges: carrying out actions that would disturb the peaceful relations with a foreign country (article 118 of the Penal Code); inciting racism (article 130 and 150 of the Penal Code); disparaging the army (article 191 of the Penal Code); encouraging the public to change the current Government (article 159 and 161 of the Penal Code); and taking actions that would impair the prestige of the State (articles 130 and 132 of the Penal Code).

1263. On 20 May 2010, the case was transferred to the Amman Court of First Instance, but the date for the trial is yet to be set. If found guilty, they risk being sentenced to up to fifteen years of imprisonment.

1264. In a separate case, on 9 March 2010, the Prosecutor of the State Security Court reportedly issued an order banning the news media from reporting or commenting on the case of alleged corruption involving the Jordanian Petroleum Refinery Company (JPRC) without his personal approval. The ban was ordered following the arrest on 4 March 2010 of Mr. Adel Kudah, former Minister of Finance and an official of JPRC, Mr. Ahmed Rifai, former executive of JPRC, Mr. Khaled Shahin, prominent businessman, and Mr. Mohammed Rawashdeh, Government economic advisor, for allegations of corruption related to an expansion project undertaken by JPRC.

1265. Concern was expressed that the charges against Mr. Sufyan Aref Ahmad Tell and Mr. Muwfaq Mohd Khalf Al Mahadin and the ban imposed on the media regarding allegations of corruption constitutes a direct attempt to stifle the right to peaceful freedom of expression on politically sensitive issues in the Hashemite Kingdom of Jordan.

Response from the Government

1266. In a letter dated 13 October 2010, the Government sent a letter in response to the communication sent on 3 August 2010.

1267. Investigations have ascertained that the Amman Criminal Court has not yet concluded proceedings in the first case, regarding Mr. Sufyan Aref Ahmad Tell and Mr. Muwfaq Mohd Khalf Al Mahadin, and that the second case, involving the Jordanian Petroleum Refinery Company, is still being heard by the court of appeal.

1268. As regards the request for detailed information on how far articles 118, 130, 132, 159 and 161 of the Criminal Code are in conformity with the international norms and standards on the right to freedom of opinion and expression set forth in article 19 of the International Covenant on Civil and Political Rights, and on the order handed down by the Prosecutor of the State Security Court in the case involving the Jordanian Petroleum Refinery Company, attention is drawn to the following:

1269. With regard to the question on the extent to which articles 118, 130, 132, 159 and 161 of the Criminal Code are in conformity with the international norms and standards on the right to freedom of opinion and expression set forth in article 19 of the International Covenant on Civil and Political Rights, all these articles have been incorporated into parts 1 and 2 of the Criminal Code, which deal with State-security and law and order offences. Article 19, paragraph 3, of the Covenant stipulates: “the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

1270. Certain restrictions may thus be imposed on the right to freedom of opinion, as provided for in paragraph 2 of article 19, and cited by the Special Rapporteurs in their letter provided that they are sanctioned by law and are necessary in order to protect security or ensure respect of the rights or reputations of others. This principle is also reflected in the Criminal Code.

1271. Paragraph 5 (n) of the Human Rights Council resolution referred to in the letter from the Special Rapporteurs stipulates that States must review their procedures, practices and legislation, as necessary, in order to ensure the full and effective implementation of all their obligations under international human rights law, including to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (ordre public) or of public health or morals.

1272. All the offences with which the two persons involved in this case were charged are included in legislation enacted to protect State security. Proceedings brought on the basis of that legislation do not impinge on Jordan’s obligations under article 19 of the International Convention on Civil and Political Rights. Legal proceedings were not initiated against these persons merely because of the debates that they had participated in or because they had criticized Government policy. In this connection, it should be noted that the Press and Publications Act was amended to provide for the establishment, in courts of first instance and courts of appeal, of specialized criminal divisions to consider press and publications cases. The special division of the Amman court of first instance was granted exclusive jurisdiction to hear publications and publishing offences under the Press and Publications Act that constitute a threat to national security, either at home or abroad. Moreover, under the recently promulgated act amending the Criminal Code, fines rather than prison terms are imposed for certain press offences.

1273. The Public Prosecutor’s decision was taken in accordance with the relevant legislation (art. 225 of the Criminal Code, art. 39 of the Press and Publications Act No. 8 of 1998 , art. 11 of the Contempt of Courts Act and art. 13 of the Access to Information Act) and is in conformity with the relevant international standards, including article 19, paragraph 3, of the International Covenant on Civil and Political Rights, which states that under the law, certain restrictions may be placed on freedom of expression and opinion when this is necessary to ensure respect for the rights and reputations of others.

Observations

1274. The Special Rapporteur thanks the Government for the detailed response received to his communication dated 3 August 2010. The Special Rapporteur notes some of the measures that have been taken in an attempt to address some of the concerns expressed by protesters since the beginning of the year, and urges the Government to take the necessary measures to guarantee the right to freedom of opinion and expression of all individuals. He

also encourages the Government to ensure an environment which is conducive to the work of human rights defenders, journalists and bloggers without fear of persecution.

Kazakhstan

Urgent appeal

1275. On 2 July 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion and protection of human rights while countering terrorism, sent an urgent appeal regarding Mr. **Ershidin Israel**, 38 years old, ethnic Uyghur of Chinese nationality, currently being held at the Pretrial Investigation Center No. 1 of Almaty, Seifulina Street.

1276. According to the information received, Mr. Israel fled the Xinjiang Uyghur Autonomous Region of China to Kazakhstan in September 2009 after he had provided information to Radio Free Asia's Uyghur Service about the alleged torture to death of a Uyghur detainee and the subsequent arrest of two individuals whom the Chinese authorities accused of providing information on the case to the same radio station.

1277. After his arrival in Kazakhstan, Mr. Israel applied for refugee status from the office of the United Nations High Commissioner for Refugees (UNHCR) in Almaty, which he was granted in mid-March 2010. Mr. Israel has also made an application to the Kazakh authorities for asylum, which is still pending. At the end of March 2010, UNHCR had secured a resettlement offer for Mr. Israel from Sweden. Mr. Israel was scheduled to depart to Sweden on 1 April 2010.

1278. Subsequently, the Kazakh authorities denied Mr. Israel's application for an exit visa, indicating that his name appeared on Interpol's terrorism watch list. Prior to that, the Chinese authorities had made an extradition request based on terrorism allegations against Mr. Israel.

1279. The authorities agreed that Mr. Israel live in a 'safe place'/apartment designated by UNHCR and that Mr. Israel be accompanied by representatives of UNHCR to interviews that have been conducted by the authorities repeatedly over the past months and were focused on his background and how he crossed the border into Kazakhstan.

1280. On 23 June 2010, Mr. Israel was arrested by the authorities with a view to his possible extradition to China. A court hearing took place on 25 June and the court upheld and sustained the arrest in relation to the possible extradition. Mr. Israel appealed that court decision; the appeals proceedings are expected for today, 2 July 2010. Information received indicates that in case the appellate court upholds the lower's court decision, the office of the Prosecutor-General is likely to request more information from the Chinese authorities in relation to the extradition request.

1281. Concern was expressed about the possible forcible return of Mr. Israel to China where he risks arrest and trial on terrorism charges in relation to the aforementioned information provided by him to Radio Free Asia. Further concern was expressed about Mr. Israel's physical and mental integrity if returned to China.

Urgent appeal

1282. On 8 October 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication to the Government concerning Mr. **Vadim Kuramshim**, Mr. **Zhumagali Omanbayev** and Mr. **Spandiyar Shymyrkulov**.

1283. According to the information received, on 6 October 2010 at 6 p.m., Mr. Vadim Kuramshin and Mr. Zhumagali Omanbayev, brother of a prisoner at 40th Colony Dolinka in Shakhtinsk, near Karaganda, were arrested following after they tried to arrange a meeting with the prison administration. The men were trying to obtain permission to meet with a prisoner, Mr. Spandiyar Shymyrkulov who, on his arrival at the Colony was allegedly beaten up and put in a punishment cell for refusing to clean a toilet.

1284. As Mr. Kuramshin and Mr. Omanbayev were leaving the prison building, the men were arrested by officers from the Shakhtinsk Police and staff of the Committee for the Criminal Investigation System (National prison administration), and taken to the local police station. Upon inquiring into the reasons for the arrest, Mr. Kuramshin was informed by Police Major Kashkynov that he had received information from certain persons accusing him of being involved in drug trafficking. These people remain anonymous.

1285. Mr. Zhumagali Omanbayev has reportedly been pressured to turn down help from Mr. Kuramshin. Mr. Kuramshin and Mr. Omanbayev are currently held at the Police Station in Shakhtinsk. With regard to the situation of Mr. Spandiyar Shymyrkulov, no information about his well-being was available at the time the communication was sent.

Response from the Government

1286. In a letter dated 21 January 2011, the Government responded to the communication sent on 8 October 2010. V. Kuramshin and Z. Omanbaev were arrested on 6 October 2010 as they were trying to meet with the administration of a correctional institution to obtain a meeting with the prisoner S. Shymyrkulov, who had been beaten for refusing to clean a toilet.

1287. Verification of the matter laid out in the complaint showed that, at approximately 10 a.m. on 6 October 2010, V. Kuramshin, introducing himself as a representative of a human rights defenders' organization, and Z. Onbaev (in the communication of the United Nations Special Rapporteur, the family name is given as Omanbayev), stating he was the cousin of prisoner S. Shymyrkulov, came to the administration of the AK-159/6 institution of Karaganda province department of the Committee of the Penal Correction System (Dolinka colony, strict regime), asking for a meeting with S. Shymyrkulov.

1288. The meeting was refused because, pursuant to a decision by the head of the institution on 4 October 2010, S. Shymyrkulov was being held in a punishment cell for 15 days for refusing to clean the quarantine area of the correctional institution (under article 114 of the Code of Criminal Procedure, prisoners held in punishment cells are not allowed to have visits).

1289. It has not been proved that the institution administration used unauthorized measures against S. Shymyrkulov for refusing to clean a toilet.

1290. On the day in question, at 5.18 p.m., duty operator of Karaganda province Internal Affairs Department Central Operations Division received anonymous information, recorded under No. 1874, that unknown persons travelling in a vehicle were transporting narcotic substances into the AK-159/6 institution (Dolinka colony open prison).

1291. The information was promptly passed on at area level to Shakhtinsk police station, where the duty officer recorded it in the information register at 5.18 p.m. under No. 1874, and immediately instructed Dolinka neighbourhood officer to check the report. The vehicle was apprehended with driver Z. Onbaev and passenger V. Kuramshin at the entrance to the open prison.

1292. The neighbourhood officer used his powers to check the driver's papers, carried out a visual inspection of the vehicle and then, in light of the information received, asked them to go to Shakhtinsk police station to give an explanation.

1293. It should be noted that Z. Onbaev and V. Kuramshin drove independently, without the officer accompanying them, to Shakhtinsk police station, where only Z. Onbaev was actually questioned; V. Kuramshin refused to give any explanation. Z. Onbaev's statement was taken in the entrance hall of the police station in front of the duty officer, where he wrote by hand that he had come to Dolinka on the request of V. Kuramshin to meet an acquaintance of the latter.

1294. They were not detained, there was no unlawful action by the police officers against them, and they remained in Shakhtinsk police station no longer than 30 minutes. V. Kuramshin and Z. Onbaev made no complaints to the procurator's office about unlawful actions by officers of Shakhtinsk police station, or the administration of institutions in the area of Dolinka colony.

1295. It should be noted that, on 19 October, the administration of institution AK-159/6 allowed V. Kuramshin and Z. Onbaev to meet briefly with S. Shymyrkulov. The meeting lasted one hour, during which V. Kuramshin offered his services and encouraged S. Shymyrkulov to make a complaint about the actions of the open prison administration, but the latter refused to do so.

1296. Given those circumstances, the conclusions drawn in the communications from the Special Rapporteurs have not been substantiated.

Observations

1297. The Special Rapporteur thanks the Government for the response received to his communication dated 8 October 2010. However, the Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 2 July 2010.

1298. The Special Rapporteur also urges the Government to take the necessary measures to ensure an environment of tolerance of diverse and critical views which would allow journalists and human rights defenders in particular to carry out their legitimate work without fear of persecution.

Kenya

Urgent appeal

1299. On 30 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding Mr. **Keneth Kirimi**, a human rights activist working with the non-governmental organization Release Political Prisoners (RPP), and member of Bunge la Mwananchi, a grassroots movement fighting social injustice and promoting accountable leadership.

1300. According to the information received, on 22 April 2010, Mr. Keneth Kirimi was arrested by plain clothed officers in Nairobi, together with two other individuals who were with him at the time. The arrest reportedly took place near the headquarters of the General Services Unit of the police. Mr. Kirimi and the two other individuals were allegedly forced into a vehicle and driven around the Eastlands for several hours and interrogated.

1301. While the two other individuals were released on the same day, Mr. Kirimi was allegedly detained in Thika, where he was blindfolded and sedated, and taken to an isolated house in Suswa. During his detention he was allegedly subjected to torture and ill-treatment, including sexual assault, intimidation by gunshots fired in a small room and threats of sexual violence against his wife.

1302. Mr. Kirimi was allegedly interrogated about RPP, the work carried out by Stephen Musau, the executive coordinator of RPP, the organization's work on extrajudicial killings and the sharing of their report with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston.

1303. Mr. Keneth Kirimi was found on 25 April 2010, at Suswa market, reportedly in serious physical condition and is currently undergoing medical treatment.

1304. Concern was expressed that the arrest, arbitrary detention and torture and ill-treatment of Mr. Keneth Kirimi may be related to his legitimate work in defence of human rights, in particular his work on political prisoners and summary executions in Kenya. Further serious concern was expressed regarding the physical and psychological integrity of Mr. Kirimi. Further concern was expressed regarding threats against human rights defenders who have been in contact with the Special Rapporteur on extrajudicial, summary or arbitrary executions in connection with his visit to Kenya in February 2009. A communication containing such concerns was sent to your Government on 13 March 2009. No response addressing the concerns has yet been received to that communication. In this context we wish to recall that in a statement to the 11th session of the Human Rights Council in June 2009, the representative of your Government regretted and condemned the killings of human rights defenders from the Oscar Foundation and reassured that no human rights defenders will be intimidated or harassed.

Observations

1305. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to the communication sent on 30 April 2011, particularly given the seriousness of the allegations received and concerns expressed. He also regrets not having received a response from the Government to the communications sent earlier on 30 April 2010, 19 October 2009, 13 March 2009 and 18 February 2009. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Kuwait

Urgent appeal

1306. On 11 June 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on the independence of judges and lawyers sent an urgent appeal to the Government regarding the detention of and charges against Mr. **Mohammad Abdul Qadar Al-Jasim**, journalist and lawyer.

1307. According to information received, on 1 April 2010, a Kuwaiti trial court convicted Mr. Al-Jasim on criminal slander charges based on remarks he made at a private gathering in a house of a member of parliament at which he allegedly questioned the Prime Minister's fitness for office and called for his removal. He was sentenced to six months in prison, but Mr. Al-Jasim has reportedly appealed his sentence. His sentence was thus suspended pending the appeal.

1308. On 11 May 2010, Mr. Al-Jasim was summoned to the department of National Security for interrogation, and was allegedly questioned for more than fifteen hours over a period of two days by state security officers. From 11 to 18 May, Mr. Al-Jasim allegedly went on hunger strike to protest his detention. He has been held in detention since then.

1309. On 24 May 2010, Mr. Al-Jasim was presented before the court in Kuwait City for the first session of his trial on charges of “instigating to dismantle the foundations of Kuwaiti society”, “slight to the personage of the Emir”, and “instigating to overthrow the regime”. The lawsuit was reportedly filed by Shaikh Nasser Sabah al-Ahmed al-Sabah, Minister of Amiri Diwan Affairs and the son of the Emir. These charges are linked to 32 articles published on his personal blog “Al Meezan” over the last five years, which allegedly criticised public officials in connection with the exercise of their offices.

1310. On the same day, public prosecutor’s office reportedly banned coverage of the case in all media, without providing any legal justification or compelling reasons for such a ban.

1311. On 7 June 2010, Mr. Al-Jasim was presented before the court for the second session of his trial. During the session, Mr. Al-Jasim and his lawyers allegedly complained that according to Article 44 of the Law on Penal Procedures, the 21-day maximum period of precautionary detention of Mr. Al-Jasim ended on 31 May 2010 and, since there had been no court order to renew his detention, his continued detention is thus illegal. The defence team also reportedly complained that prior to both trials, Mr. Al-Jasim had not been given due notification of the session, in breach of the Law on Penal Procedures. It was also allegedly claimed that Mr. Al-Jasim’s detention, alongside convicted prisoners in cases related to State security, is a violation of articles 25 and 26 of the Law on Prisons. The case has been adjourned until 21 June 2010 to hear the testimony of the investigation officer.

1312. Over his career, Mr. Al-Jasim has reportedly been the object of more than 20 formal complaints filed because of his writings and statements.

1313. Concern was expressed that the detention of and charges against Mr. Al-Jasim constitute an attempt to stifle the right to freedom of opinion and expression, in particular expression that is critical of Government officials. Moreover, concern was expressed that the ban of any media coverage of the case violates the public’s right to receive information.

Urgent appeal

1314. On 3 May 2010, the Special Rapporteur, together with the Special Rapporteur on the human rights of migrants, sent an urgent appeal regarding the alleged **arrest and detention of 33 Egyptian nationals, as well as forced deportation** of some of these concerned nationals.

1315. According to the information received, 33 Egyptian citizens lawfully residing and working in Kuwait were arrested by the Kuwait State Security on 8 and 9 April 2010. It is alleged that their arrests were connected to their involvement in the “National Association for Change”, a political group founded by the Egyptian opposition candidate, Dr. Mohammad Al-Baradei.

1316. The first round of arrests took place on 8 April 2010. Three Egyptian nationals were arrested and detained after they attended a meeting of Al-Baradei supporters at a local café. Then on 9 April 2010, 30 Egyptian nationals were arrested by the State Security while they were gathering in front of the Sultan Center supermarket and restaurant in Al-Samia to discuss the arrests which took place on 8 April 2010. The arrest and detention of these 33 Egyptian nationals have been reportedly carried out pursuant to Kuwait’s law prohibiting non-citizens from participating in processions, demonstrations, or public gatherings in Kuwait.

1317. 17 of those arrested have been reportedly deported to Egypt on 10 April 2010. There are concerns about the safety of those who were deported, in light of reports that more than 90 demonstrators calling for political reforms in Egypt, including supporters of Dr. Mohammad Al-Baradei, have been subjected to violence and arrested by the Egyptian security forces in the month of April.

Urgent appeal

1318. On 11 June 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the detention of and charges against Mr. **Mohammad Abdul Qadar Al-Jasim**, journalist and lawyer.

1319. According to information received, on 1 April 2010, a Kuwaiti trial court convicted Mr. Al-Jasim on criminal slander charges based on remarks he made at a private gathering in a house of a member of parliament at which he allegedly questioned the Prime Minister's fitness for office and called for his removal. He was sentenced to six months in prison, but Mr. Al-Jasim has reportedly appealed his sentence. His sentence was thus suspended pending the appeal.

1320. On 11 May 2010, Mr. Al-Jasim was summoned to the department of National Security for interrogation, and was allegedly questioned for more than fifteen hours over a period of two days by state security officers. From 11 to 18 May, Mr. Al-Jasim allegedly went on hunger strike to protest his detention. He has been held in detention since then.

1321. On 24 May 2010, Mr. Al-Jasim was presented before the court in Kuwait City for the first session of his trial on charges of "instigating to dismantle the foundations of Kuwaiti society", "slight to the personage of the Emir", and "instigating to overthrow the regime". The lawsuit was reportedly filed by Shaikh Nasser Sabah al-Ahmed al-Sabah, Minister of Amiri Diwan Affairs and the son of the Emir. These charges are linked to 32 articles published on his personal blog "Al Meezan" over the last five years, which allegedly criticised public officials in connection with the exercise of their offices.

1322. On the same day, public prosecutor's office reportedly banned coverage of the case in all media, without providing any legal justification or compelling reasons for such a ban.

1323. On 7 June 2010, Mr. Al-Jasim was presented before the court for the second session of his trial. During the session, Mr. Al-Jasim and his lawyers allegedly complained that according to Article 44 of the Law on Penal Procedures, the 21-day maximum period of precautionary detention of Mr. Al-Jasim ended on 31 May 2010 and, since there had been no court order to renew his detention, his continued detention is thus illegal. The defence team also reportedly complained that prior to both trials, Mr. Al-Jasim had not been given due notification of the session, in breach of the Law on Penal Procedures. It was also allegedly claimed that Mr. Al-Jasim's detention, alongside convicted prisoners in cases related to State security, is a violation of articles 25 and 26 of the Law on Prisons. The case has been adjourned until 21 June 2010 to hear the testimony of the investigation officer.

1324. Over his career, Mr. Al-Jasim has reportedly been the object of more than 20 formal complaints filed because of his writings and statements.

1325. Concern was expressed that the detention of and charges against Mr. Al-Jasim constitute an attempt to stifle the right to freedom of opinion and expression, in particular expression that is critical of Government officials. Moreover, concern was expressed that the ban of any media coverage of the case violates the public's right to receive information.

Observations

1326. The Special Rapporteur regrets that at the time of the finalization of this report, the Government of Kuwait had not transmitted a response to his communication of 11 June 2010 and 3 May 2010. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Kyrgyz Republic

Urgent appeal

1327. On 22 June 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government concerning Mr. **Azimzhan Askarov**, a prominent Kyrgyz human rights defender, and director of the human rights organization Vozdukh (Air), which forms part of regional human rights network in southern Kyrgyzstan. He has been documenting police ill-treatment of detainees in the village of Bazar Korgan, and in other parts of the Jalal-Abad region of Kyrgyzstan for several years.

1328. According to the information received, on 15 June 2010, Mr. Azimzhan Askarov was detained by representatives of the Bazar Korgan District Police Department. According to information provided by his first lawyer appointed by the police, his detention was not officially registered until 16 June 2010, albeit he was arrested on 15 June 2010 and such registration under the law should have taken place within 3 hours following the arrest.

1329. From 15 to 20 June 2010, Azimzhan Askarov was held incommunicado in a pre-trial detention centre in Bazar Korgan. According to his brother, who was arrested together with him and who was released on 17 June 2010, Azimzhan Askarov and he were subjected to daily torture during interrogations. Upon his release, Mr. Azimzhan Askarov's brother appealed to human rights defenders with the request for urgent intervention, as Mr. Azimzhan Askarov allegedly feared for his life while in detention.

1330. On 17 June 2010, at 16:35, the prosecutor issued a decree accusing Mr. Askarov of crimes, foreseen under article 233 para 2 and 3, article 299 para 2 points 1 and 3 of the Penal Code under criminal case # 166-10-159. The court has sanctioned the arrest of Mr. Azimzhan Askarov for another two months, until 16 August 2010, in order to carry out investigation. On 21 June 2010, a complaint was lodged with the Djalalabad district court appealing the court's decision to prolong Mr. Azimzhan Askarov's detention. Human rights defenders were allegedly forced to pay a small bribe (upload mobile telephone balance) to have their appeal registered.

1331. The first meeting of Mr. Azimzhan Askarov with an independent lawyer and his colleagues took place on 20 June 2010. According to them, Mr. Askarov was very bleak, he could not sit. Both meetings took place in the presence of several police officers. It is believed that Mr. Askarov was beaten on his kidneys. According to the press release issued by the law-enforcement officials, the medical examination has not revealed any signs of physical mistreatment.

1332. It was reported that Mr. Azimzhan Askarov was subjected to prolonged daily beatings by police officials, in order to force him to disclose the location of his film clips and video camera. Mr. Azimzhan Askarov has filmed violence, and arson attacks in the mainly Uzbek-populated district of Bazar-Korgon. Mr. Askarov is believed to have filmed rioters firing on unarmed civilians, while armed police officers present at the scene allegedly did nothing to prevent ransoms and even participated in them.

1333. On 15 June 2010, police conducted its first search of Mr. Askarov's house. When they demanded to open the gates and his wife refused to do so, they fired in the air and broke down the entrance door of the gate. Mr. Azimzhan Askarov's wife managed to flee to a neighbour's house. Two more searches were conducted on 17 June 2010, one during the day and another in the evening. Human rights defenders arrived at his house at the end of the first search. According to the neighbours, Mr. Azimzhan Askarov was brought with the police officers who carried out the second search. On both occasions, Mr. Askarov's house

was ransacked, and all food and his car were taken away from the house. According to human rights defenders, searches were conducted without a witness.

1334. On 17 June 2010, the Ombudsman of Kyrgyzstan, Mr. Tursunbek Akun declared at a press conference that the detention and charges against Mr. Azimhan Askarov were unfounded. A similar statement was issued by Kyrgyz human rights defenders on 15 June 2010, expressing concern concerning the arrest and detention of Mr. Askarov and stressing that he worked peacefully on monitoring human rights violations committed.

1335. Concern was expressed that the arrest and detention of Mr. Azimzhan Askarov may be related to his peaceful activities as a human rights defender, in particular to monitoring and recording the violence and arson attacks related to the recent ethnic violence in the Jalal-Abad region. In light of the alleged prolonged beatings and incommunicado detention, further serious concerns are expressed regarding the physical and psychological integrity of Mr. Azimzhan Askarov.

Response from the Government

1336. In a letter dated 22 July 2010, Government of the Kyrgyz Republic replied to the urgent appeal dated 22 June 2010.

1337. After mass disorders in the village of Bazar-Korgon, Dzhahalal-Abad province, on 13 June 2010, the organizers of the disorders resorted to particular brutality in killing local police inspector M. Sulaimanov; seven other officers were wounded to varying degrees.

1338. The same day, the procurator's office in Bazar-Korgon district, Dzhahalal-Abad province, initiated criminal proceedings for incitement to ethnic, racial, religious or interregional hatred, mass disorders and murder of a member of the law enforcement agencies and the military.

1339. On 16 June 2010, Mr. Azimzhan Askarov and another individual were arrested on suspicion of having committed the above-mentioned crime, and taken into custody at the Bazar-Korgon district internal affairs office. Mr. Askarov's house was searched with the authorization of the Bazar-Korgon district procurator, and the following were found in a bookcase and removed: 10 cartridges for a 9-mm calibre PM pistol; various books and disks calling for the incitement of inter-ethnic discord.

1340. Mr. Askarov and another individual were charged under articles 233 (mass disorder) and 299 (inciting ethnic, racial, religious or interregional hatred) of the Criminal Code. The following day, the Bazar-Korgon district court ordered their pre-trial detention as a preventive measure.

1341. The charges against Mr. Askarov and another individual are supported by the evidence of six of the police officers who were victims, the official reports of the confrontations between the police and Mr. Askarov, evidence from a witness, and the official reports of his confrontation with Mr. Askarov.

1342. According to evidence from the above-mentioned police officers, on 13 July 2010, Mr. Askarov and another individual were in the crowd, encouraging people to refuse to obey the law enforcement agencies, to take hostage the head of the district internal affairs office, and to kill the other police officers.

1343. On 24 June 2010, Mr. N. Toktakunov, lawyer for Mr. Askarov, came to the Dzhahalal-Abad provincial procurator's office to submit a complaint concerning the alleged torture of his client. According to a forensic medical report dated 17 June, Mr. Askarov had bruising around his arm and lower back, serious enough to be considered impairment to health but not causing any short-term health disorder.

1344. The inquiry conducted as a result of the complaint found that Mr. Askarov was arrested on 16 June 2010 and held in the cell where two other individuals were being detained on suspicion of having participated in the mass disorders. The same day, on the grounds that Mr. Askarov's illegal actions had led to his house being set on fire and many people being killed, one of the individuals hit Mr. Askarov around the head, causing Mr. Askarov to fall on his back on the concrete floor.

1345. On 25 June 2010, Mr. Askarov requested the Dzhahal-Abad procurator's office not to charge said individual as he had no claims against him. Moreover, it was noted in the complaint that none of the police officers had beaten him, and he refused to undergo a forensic medical examination.

1346. On 29 June 2010, the provincial procurator's office refused to initiate criminal proceedings against said individual because there had been no complaint from the victim; and in respect of the alleged use of torture, because no crime had been committed.

1347. Mr. Askarov's participation in the mass disorders has been proved by materials in the case file. Investigations are now taking place in respect of the criminal case.

Allegation letter

1348. On 12 August 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an urgent appeal to the Government concerning Mr. **Ulugbek Abdusalamov**, an ethnic Uzbek journalist in detention in southern Kyrgyzstan.

1349. According to the information received, Mr. Ulugbek Abdusalamov was detained on 14 June on charges of "inciting ethnic hatred" under Article 299 of the Kyrgyzstani Criminal Code and transferred to a police detention centre in the town of Jalal-Abad two days later. Mr. Abdusalamov had a cerebral hemorrhage in 2009, suffers from high blood pressure, stomach ailments and a heart condition. On 29 June, he was transferred to a regional hospital after his lawyer filed six requests, but was later returned to police detention in Jalal-Abad. On 24 July, he was once again taken to the hospital upon his lawyer's request, after his health continued to suffer. He was subsequently taken back to police detention, despite the fact that his condition is said to be very poor.

1350. Concern was expressed for the physical and physiological integrity of Mr. Ulugbek Abdusalamov, due to the lack of adequate medical attention.

Response from the Government

1351. In a letter dated 5 October 2010, the Government responded to the communication sent on 12 August 2010. In another letter dated 2 November 2010, the Government submitted the same reply.

1352. In the letter dated 5 October 2010, the Government informed that Mr. Abdusalamov was apprehended in Nookan district as he attempted to cross the border of Kyrgyzstan into Uzbekistan on 14 June 2010. He was charged with incitement to ethnic hatred under article 299 of the Kyrgyz Criminal Code. The court ordered Mr. Abdusalamov's remand in custody on 16 June 2010.

1353. Mr. Abdusalamov is the editor of the provincial newspaper *Diydor* (Meeting). He has also held the post of vice-president of the Jalal-Abad Province Uzbek Ethnic Cultural Centre for some time.

1354. Mr. Abdusalamov took advantage of his professional position and systematically published in *Diydor* articles voicing separatist views aimed at inciting ethnic hatred and advocating the supremacy of the Uzbek people over other peoples in Kyrgyzstan, in violation of article 23 of the Mass Media Act.

1355. The detainee undertook various activities between 2000 and June 2010, together with Mr. K. Batyrov, President of the Uzbek Ethnic Cultural Centre, Mr. O. Karamatov, Chancellor of the People's Friendship University, and others, to advance the Uzbek diaspora's position. The activities included demands to make Uzbek an official language, to open more institutions of secondary and higher education with instruction in Uzbek and to guarantee that 30 per cent of State and local government and law enforcement posts were held by ethnic Uzbeks.

1356. Mr. Abdusalamov ignored the law in force in Kyrgyzstan and purposely organized meetings of ethnic Uzbeks between April and May 2010 at A. Batyrov University, a private university in Jalal-Abad, and in places with a high concentration of ethnic Uzbeks in Jalal-Abad and Osh provinces. Mr. Abdusalamov made explicit public calls for a violent seizure of high-level positions in State and law enforcement bodies and for the destabilization of their activities in the guise of criticizing the work of the country's law enforcement bodies.

1357. Mr. Abdusalamov, together with Mr. Batyrov and others, emphasized in their statements that there had not yet been a political assessment of the ethnic conflict that occurred in Osh province in 1990, which the ethnic Uzbek people had been awaiting for 20 years. He therefore called on ethnic Uzbeks to take decisive unlawful action.

1358. The statements by Mr. Abdusalamov and other persons were repeatedly broadcast on the television channels Osh TV and Mezon TV, in violation of article 23 of the Mass Media Act. These statements provoked a public outcry from the people in the southern regions and subsequently caused the Kyrgyz population to conduct grass-roots meetings in Jalal-Abad.

1359. The procurator's office in Jalal-Abad stated that the accusations against Ulugbek Abdusalamov had emerged during the investigation of a violent incident that occurred at Batyrov University in Jalal-Abad on 19 May 2010.

1360. Mr. Abdusalamov was charged on 10 August 2010 with offences under article 221, paragraph 2 (Abuse of power by an employee of a profit-making or other organization), article 233, paragraphs 1 to 3 (Organization of mass unrest), article 295-1 (Separatist activity) and article 299, paragraphs 2 (2) and 2 (3) (Incitement to ethnic, racial, religious or interregional hatred), of the Criminal Code.

1361. The criminal case was referred for trial to the municipal court in Jalal-Abad on 26 August 2010.

1362. Neither Mr. Abdusalamov nor his lawyer filed a complaint or an application in the course of the investigation by the procuratorial bodies of Kyrgyzstan.

Urgent appeal

1363. On 18 August 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the government regarding Mr. **Azimzhan Askarov**, director of *Vozdukh*, a human rights organization which documents police ill-treatment in detention. Mr. Askarov was the subject of a joint urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special

Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 22 June 2010.

1364. According to the information received, Mr. Azimzhan Askarov, an ethnic Uzbek, was detained by the police on 15 June, suspected of being involved in the death of a police officer during the recent violence in the country.

1365. On 26 July, the Jalal-Abad city court upheld the decision of the prosecutor's office not to investigate allegations that Mr. Askarov had been tortured following his detention. The authorities have argued that the large bruises on Mr. Askarov's body were produced by his cellmate. In addition, the General Prosecutor's Office indicated that Mr. Askarov had confirmed that he had not been ill-treated. Mr. Askarov's lawyer has not been allowed to meet with his client in private, and believes he is afraid of further ill-treatment if he files a complaint.

1366. During the time Mr. Askarov has been in detention, his sister-in-law and his lawyer were both attacked when they went to visit him at the police detention centre. The police reportedly failed to intervene to stop the aggression.

Response from the Government

1367. In a letter dated 21 August 2010, the Government responded to the communication sent on 18 August 2010 by providing the same reply as to the communications sent on 22 June 2010 (see above). The Government sent another letter dated 6 October 2010 to the communication sent on 18 August 2010, but at the time of finalization of this report, the reply had not yet been translated. He hopes that he will be able to make his observations on the reply received in his future report.

Urgent Appeal

1368. On 29 October 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding Mr. **Azimzhan Askarov**, director of Vozdukh, a human rights organization which documents police ill-treatment in detention, and Mr. **Nurbek Toktakunov**, Mr. Askarov's lawyer. Mr. Askarov was the subject of joint urgent appeals sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 22 June 2010 and by the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on 18 August 2010. Responses to the above communications were received on 23 July 2010 and 23 August 2010, respectively. Mr. Toktakunov was the subject of a joint allegation letter sent by the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the independence of judges and lawyers, on 12 August 2010.

1369. According to the new information received, Mr. Azimzhan Askarov is currently appealing a sentence of life imprisonment imposed by the regional court at Nooken, in the Jalal-Abad region of the Kyrgyz Republic, after a trial allegedly characterised by severe procedural irregularities and allegations of torture and ill-treatment of the accused while in detention. Mr. Askarov and the other defendants, all ethnic Uzbeks, were found guilty of murdering a Kyrgyz policeman during ethnic clashes in Bazar-Korgon in June 2010.

1370. The trial was allegedly characterized by worrying irregularities with regard to fair trial procedure. At the opening of the trial hearing on 2 September 2010, family members of the deceased policemen reportedly verbally abused Mr. Askarov and threatened “to kill all the defendants and their children wherever they are”. During the hearing, relatives of the victim reportedly prevented Mr. Askarov’s relatives from entering the court room. It is also reported that they repeatedly interrupted the proceedings with threats and insults against the defendants, often making reference to the defendants’ ethnicity. The judge allegedly did not intervene to maintain order in the court room. The defendants’ lawyers were also attacked by relatives of the deceased police officer and injured police officers, who reportedly hit them with sticks, and threw a glass at them, which smashed against the bars of the cage holding the defendants, resulting in splinters of glass hitting one of the lawyers. It is reported that court officials, including the judge, intervened only sporadically to stop the violence and to restore order. Mr. Askarov’s lawyers were allegedly denied the opportunity to question witnesses or submit petitions during the hearing. When the lawyers expressed concern that they would not be able to defend their clients under these conditions, the judge threatened to have their licenses to practice revoked.

1371. Before the trial hearing on 6 September 2010 began, family members of the deceased policeman and injured police officers posted flyers on the walls of the court building containing offensive language against Mr. Askarov and co-defendants and calls for the application of death penalty. The hearing itself was characterized by yet further allegations of procedural irregularities. A request by Mr. Askarov’s lawyer, Mr. Nurbek Toktakunov, that the hearing be deferred to allow him time to prepare an adequate defence was also denied; Mr. Toktakunov was also reportedly denied permission to meet with his client, and informed that he could only meet Mr. Askarov at the end of the trial process. Members of the audience, including family members of the deceased policeman, attempted to violently attack the defendants, and frequently subjected both the defendants and Mr. Toktakunov to verbal abuse; racist remarks; and threats. It is reported that no witnesses for the defence were heard during the trial, and that when Mr. Toktakunov stated his intention to call a witness, he was told by the victim’s relatives that the witness would “not leave this place alive”. Further, members of the audience also reportedly directed questions to the defendants without authorisation from the judge, and the accused did not receive a full explanation of their rights and responsibilities. It is also alleged that Mr. Askarov’s relatives were subjected to intimidation and threatened not to attend the hearing.

1372. Serious concerns have been raised regarding the treatment of Mr. Askarov and the other defendants while in detention. At the trial hearing of 6 September 2010, four of the defendants, including Mr. Askarov, allegedly bore visible marks indicating that they had been subjected to beatings. A petition by Mr. Toktakunov that his client be given a thorough medical exam was denied. When questioned by the judge, Mr. Askarov denied that he was subjected to any harm, although concern is expressed that this may have been out of fear of retribution.

1373. On 15 September 2010, Mr. Askarov and all seven defendants were found guilty and sentenced to life imprisonment. The verdict in the trial was subsequently denounced by Kyrgyz Ombudsman, Mr. Tursunbek Akun, as being politically motivated. Mr. Akun also claimed that an alternative investigation into the policeman’s killing held by his office had found Mr. Askarov not guilty.

1374. On 25 October 2010, Mr. Askarov appeared before Tashkumyr city court in order to appeal against the sentence. It is reported that upon arriving at the court, witnesses for the defence were prevented from entering the court room by a group of individuals. Upon raising the issue with the judge, the defence lawyer was questioned as to why the defence team had not previously applied for protection for their witnesses. During the session, several defendants reportedly claimed that they had been subjected to torture during

interrogation; however, the court reportedly failed to respond to the allegations. The next hearing in the appeal is scheduled for 3 November 2010.

1375. Concern was expressed that the conviction and sentencing of Mr. Azimzhan Askarov may be related to his legitimate and peaceful work in defence of human rights in Kyrgyzstan. Grave concern was also expressed for the physical and psychological integrity of Mr. Askarov and his family, Mr. Toktakunov, and witnesses for the defence in this case, in light of the repeated allegations of torture and ill-treatment, attacks, harassment, and intimidation outlined above. Further concern was expressed regarding the aforementioned allegations of irregularities relating to due process during Mr. Askarov's trial and appeal.

Response from the Government

1376. In a letter dated 16 December 2010, the Government responded to the communication sent on 29 October 2010.

1377. According to the review by the internal security service of the Ministry of Internal Affairs, at approximately 3 p.m. on 2 August 2010, in the course of inquiries into criminal case No. 166-10-159, remand prisoner A. Askarov, who was being held in the Bazar-Korgon district temporary holding facility for offences under article 97, paragraphs 2 (4), 2 (6), 2 (9), 2 (10), 2 (15) and 2 (16), article 299, paragraphs 2 (1) and 2 (3), article 233, paragraphs 1, 2 and 3, and article 240 of the Criminal Code, was escorted to the district procurator's office, where investigators of the Jalal-Abad provincial procurator's office were present.

1378. On completion of the inquiries, Mr. Askarov, accompanied by his lawyer, N. Toktakunov, was escorted back to the holding facility at the internal affairs office (militia station). There, Mr. Toktakunov requested a private interview with his client and was provided with a room on the premises.

1379. At that moment, relatives of the slain Bazar-Korgon district militia officer, Captain M. Sulaimanov, came to the station asking to see the district militia chief. To avoid a conflict between the relatives of Mr. Sulaimanov and Mr. Askarov, the militia chief gave orders for Mr. Askarov to be placed in the cells. Captain Sulaimanov's relatives were then allowed onto the premises. Mr. Toktakunov was escorted from the station by militia officers and officials working for the provincial procurator's office.

1380. In addition, the review found that Mr. Toktakunov's claims — that he had been surrounded near the militia station on 23 June 2010 by a hostile crowd of local inhabitants threatening reprisals against him for defending an ethnic Uzbek and that Mr. Askarov's wife, Turdihon Askarova, had been assaulted by Mr. Sulaimanov's relatives on the premises of the militia station on 21 July 2010 — were not corroborated.

1381. This is also borne out by the fact that Ms. Askarova herself did not file a report on her assault with the militia station and that the matter of her having sustained bodily injuries was not recorded in the Bazar-Korgon district militia log.

1382. The findings of the review have been transmitted to the Jalal-Abad provincial procurator's office to be included as evidence in the above-mentioned criminal case.

1383. Information on the consideration of the criminal case against the Kyrgyz national Azimzhan Askarov by the Office of the Procurator-General and Supreme Court of the Kyrgyz Republic: at approximately 10 p.m. on 12 June 2010, about 400 to 500 ethnic Uzbeks assembled at the intersection of Saidullaev and Jalal-Abad streets in the village of Bazar-Korgon in the Bazar-Korgon district of Jalal-Abad province and 400 to 500 ethnic Kyrgyz at the intersection of Jalal-Abad and Abduraimov streets in the same village.

1384. Subsequently, at approximately 8 a.m. on 13 June 2010, about 400 to 500 ethnic Uzbeks armed with firearms, steel rods, wooden sticks and knives assembled at the Bazar-Korgon bridge on the Osh-Bishkek highway, blocked the highway and organized mass disturbances in connection with the inter-ethnic clashes in Osh.

1385. A special investigating team from the Bazar-Korgon district internal affairs office was dispatched to the scene of the incident. The militia officers' attempts to quell the criminal actions of those organizing and participating in the mass disturbances were met with resistance and disobedience; neighbourhood militia officer Captain M. Sulaimanov was seized, then stabbed repeatedly, which resulted in his death.

1386. On 13 June 2010, the Bazar-Korgon district procurator's office opened criminal case No. 166-10-159 in connection with the above-mentioned mass disturbances and murder of a law enforcement officer.

1387. As a result of the investigation, charges were brought against A. Askarov, the head of the human rights organization Vozdukh, for offences under articles 28, 30-227, paragraphs 2 (1) and 2 (3), 241, paragraph 1, 299, paragraphs 1 and 2 (1), 233, paragraphs 1, 2 and 3, 30-97, paragraphs 2 (3), 2 (4), 2 (5), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), 30-97, paragraphs 2 (1), 2 (4), 2 (5), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), 28, and 30-340 of the Criminal Code; against S. Mirzalimov under articles 233, paragraphs 1, 2 and 3, 299, paragraph 2 (3); against M. Mamadilieva under articles 299, paragraph 2 (1), and 233, paragraphs 1, 2 and 3; against E. Rasulov under articles 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), and 340; against M. Kochkarov under articles 97, paragraphs 2 (3), (4), (6), (9), (10), (13), (14) and (15), 233, paragraph 2, and 340; and against S. Mulavhunov under articles 242, paragraph 3, and 30-233, paragraph 2.

1388. Criminal case No. 166-10-159 was referred to court for trial on 11 August 2010.

1389. The Jalal-Abad provincial procurator's office completed its investigation of criminal case No. 166-10-626, filed against I. Abduraimov separately from case No. 166-10-159 in connection with the ethnically motivated mass disturbances in the village of Bazar-Korgon in the Bazar-Korgon district on 13 June 2010 and also referred to the Bazar-Korgon district court for trial, on 26 August 2010.

1390. The Bazar-Korgon district court ruled that the two criminal cases should be joined on 27 August 2010.

1391. The assize court hearing of the criminal case against A. Askarov and the others, presided over by Bazar-Korgon district court judge N.K. Alimkulov, began at 11 a.m. on 2 September 2010 in the Nookan district court.

1392. On 15 September 2010, the Bazar-Korgon district court found the defendant Azimzhan Askarov guilty of offences under articles 28, 30 and 277, paragraphs 2 (1) and 2 (3), of the Criminal Code and sentenced him to 9 years of deprivation of liberty, and, under article 241, paragraph 1, to 1 year of deprivation of liberty. He was acquitted of an offence under article 299, paragraph 1, but was sentenced to 5 years of deprivation of liberty under article 299, paragraph 2 (1), 9 years under article 233, paragraph 1, 4 years under article 233, paragraph 2, 3 years under article 233, paragraph 3, and life imprisonment, with confiscation of property, under articles 30 and 340 of the Code.

1393. In accordance with article 59 of the Code, Mr. Askarov was handed a final sentence of life imprisonment for all offences committed, to be served in a special regime colony, with confiscation of property.

1394. The charges under the following articles of the Code were dropped: 30-97, paragraphs 2 (3), 2 (4), 2 (5), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), 30-97,

paragraphs 2 (1), 2 (4), 2 (5), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), 28 and 233, paragraphs 1, 2 and 3.

1395. The defendant Shukurjan Saidkulovich Mirzalimov was found guilty of offences under article 299, paragraph 2 (1), of the Code and sentenced to 5 years of deprivation of liberty, and, under article 233, paragraph 1, to 9 years of deprivation of liberty, under article 233, paragraph 2, to 4 years and, under article 233, paragraph 3, to 2 years.

1396. In accordance with article 59 of the Code, Mr. Mirzalimov was handed a final sentence of 20 years of deprivation of liberty for all offences committed, to be served in a strengthened regime penal colony.

1397. Charges under article 233, paragraphs 1, 2 and 3, were dropped.

1398. The defendant Minyura Tirkashevna Mamadalieva was found guilty of offences and sentenced as follows: under article 299, paragraph 2 (1), of the Code, to 5 years of deprivation of liberty, under article 233, paragraph 1, to 9 years, under article 233, paragraph 2, to 4 years and, under article 233, paragraph 3, to 2 years.

1399. In accordance with article 59 of the Code, Ms. Mamadalieva was handed a final sentence of 20 years of deprivation of liberty for all offences committed, to be served in a colony for women.

1400. The defendant Sanzharbek Zhamaldinovich Mulavhunov was found guilty of offences under article 242, paragraph 3, of the Code and sentenced to 1 year of deprivation of liberty and, under article 30-233, paragraph 2, to 8 years.

1401. In accordance with article 59 of the Code, Mr. Mulavhunov was handed a final sentence of 9 years of deprivation of liberty for all offences committed, to be served in a strengthened regime penal colony.

1402. The defendant Muhamadzakir Mamashakirovich Kochkarov was found guilty of offences under article 233, paragraph 2, of the Code and sentenced to 8 years of deprivation of liberty, and to life imprisonment, with confiscation of property, under article 340 of the Code.

1403. In accordance with article 59 of the Code, the final sentence handed to Mr. Kochkarov for all offences committed was life imprisonment in a special regime colony, with confiscation of property.

1404. The charges under article 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), of the Code were dropped.

1405. The defendant Elmurad Muminzhanovich Rasulov was found guilty of offences under article 233, paragraph 2, and sentenced to 8 years of deprivation of liberty and, under article 340, to life imprisonment, with confiscation of property.

1406. In accordance with article 59 of the Code, Mr. Rasulov was handed a final sentence of life imprisonment, to be served in a special regime penal colony, with confiscation of property, for all offences committed. Taking into account an unserved sentence for a prior conviction, he was handed a final sentence, under article 60 of the Code, of life imprisonment in a special regime penal colony, with confiscation of property.

1407. The charges under article 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), of the Code were dropped.

1408. The defendant Dilshodbek Tohtasinovich Rozubaev was found guilty of offences under article 233, paragraph 2, of the Code and sentenced to 8 years of deprivation of liberty and, under article 340, to life imprisonment, with confiscation of property.

1409. In accordance with article 59 of the Code, he was handed a final sentence of life imprisonment in a special regime penal colony, with confiscation of property.

1410. The charges under article 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), of the Code were dropped.

1411. The defendant Isroilbek Magomatshakirovich Abduraimov was found guilty of offences under article 233, paragraph 2, of the Code and sentenced to 8 years of deprivation of liberty and, under article 340, to life imprisonment, with confiscation of property.

1412. In accordance with article 59 of the Code, he was handed a final sentence of life imprisonment in a special regime penal colony, with confiscation of property.

1413. The charges under article 97, paragraphs 2 (3), 2 (4), 2 (6), 2 (9), 2 (10), 2 (13), 2 (14) and 2 (15), of the Code were dropped.

1414. The legal representatives of the victim, C. Bechelova and K. Sulaimanova, the defendants Mr. Rosbaev and Mr. Mulavhunov and the defence lawyers B. Kalmanov, A. Abylakimov, G. Shaimkulova, M. Akmatova, Ms. Usmanova, T. Tomina and A. Maytov appealed the district court judgement to the Jalal-Abad provincial court.

1415. The criminal and administrative chamber of the Jalal-Abad provincial court, by a judgement of 10 November 2010, upheld the 15 September 2010 judgement of the Bazar-Korgon district court against Mr. Askarov, Mr. Mirzalimov, Ms. Mamadalieva, Mr. Mulavhunov, Mr. Kochkarov, Mr. Rasulov, Mr. Abduraimov and Mr. Rozubaev, and the defence lawyers' appeals were denied.

1416. Relatives of the defendants Mr. Askarov, Mr. Rasulov, Mr. Kochkarov, Mr. Mulavhunov, Mr. Mirzalimov, Mr. Abduraimov and Mr. Rozubaev on 5 November 2010 applied to the Jalal-Abad provincial procurator's office for measures to be taken against Jalal-Abad province special militia officers for causing the defendants bodily harm following legal proceedings at the Nookan district court on 4 November 2010.

1417. A review of the matter established that, on 4 November 2010, in the Nookan district court, the Jalal-Abad provincial court heard the appeal in the case of the murder of the Bazar-Korgon district militia officer M. Sulaimanov.

1418. The Jalal-Abad province internal affairs department chief mobilized 10 rapid response unit officers and 30 Jalal-Abad province patrol guard officers to keep the peace during the proceedings and ensure the safety of the parties.

1419. Deputy militia chief T. Torokanov and the head of the public security section of the Jalal-Abad province internal affairs department, I. Shatmanaliev, conducted an official inquiry into the alleged assault on the defendants by special militia officers following the proceedings and found no evidence to corroborate the allegation. In addition, forensic medical examinations found no sign of bodily harm of any kind caused to the defendants.

1420. Under these circumstances, the review concluded that there was no evidence of any wrongdoing in the actions of the rapid response unit officers.

1421. In this connection, on 18 November 2010 the Jalal-Abad provincial procurator's office decided against instituting criminal proceedings on the basis of the application by the relatives of Mr. Askarov, Mr. Rasulov, Mr. Kochkarov, Mr. Mulavhunov, Mr. Mirzalimov, Mr. Abduraimov and Mr. Rozubaev and explained to them the procedures for appealing that decision.

1422. N. Toktakunov, Mr. Askarov's lawyer, filed a complaint with the Jalal-Abad provincial procurator's office on 24 June 2010 alleging that Mr. Askarov had been tortured. A forensic medical examination scheduled on 17 June 2010 established that Mr. Askarov

had bruises around his arms and lower back, which were categorized according to their severity as having no short-term health effects.

1423. As a result of the review carried out of this complaint, it was established that on 16 June 2010 Mr. Askarov had been detained and placed in an administrative detention cell, where Mr. Mahmujanov and Mr. Mirzalimov were being held on suspicion of involvement in mass disturbances. On the same day, Mr. Mahmujanov, on the pretext that his house had been set on fire and many persons killed because of Mr. Askarov's unlawful acts, struck Mr. Askarov's head with his hand, causing him to fall on his back against the concrete floor.

1424. On 25 June 2010, Mr. Askarov appealed to the Jalal-Abad provincial procurator's office not to press criminal charges against Mr. Mahmujanov, as he had no claims against him. Furthermore, his statement indicated that no militia officer had beaten him, and he refused to undergo a forensic medical examination.

1425. On 29 June 2010, the provincial procurator's office declined to initiate criminal proceedings against Mr. Mahmujanov because no complaint had been filed by the victim. Nor were any criminal proceedings instituted in respect of the alleged torture, owing to lack of evidence of an offence.

Urgent Appeal

1426. On 16 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, the Independent Expert on minority issues, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government concerning the **violation of due process rights and guarantees in the conduct of criminal proceedings in relation to the June 2010 violence**, including allegations of torture and ill-treatment in Osh and Jalal-Abad Provinces, in the south of the Kyrgyz Republic.

1427. The alleged torture and ill-treatment of detainees, most of them ethnic Uzbeks, threats against lawyers and human rights defenders have been previously addressed in a number of communications sent on 20 July 2010, 12 August 2010, 18 August 2010, 15 September 2010, 25 October 2010 and 29 October 2010.

1428. Furthermore, the cases of Mr. Azimjan Askarov, a prominent ethnic Uzbek human rights defender, and director of the human rights organization Vozdukh (Air), which forms part of the regional human rights network in southern Kyrgyzstan, and his lawyer, Mr. Nurbek Toktakunov, have been the subject of previous communications. Three joint urgent appeals on the case of Mr. Askarov were addressed to the Government respectively 22 June 2010, 18 August 2010, and 29 October 2010. A communication was sent on the case of Mr. Toktakunov on 12 August 2010.

1429. While acknowledging receipt of replies sent by the Government dated 22 July 2010, 21 August 2010, 5 and 6 October 2010, 2 November 2010, and 16 December 2010, the Special Rapporteurs noted that responses to the communications dated 15 September 2010 and 25 October 2010 have yet to be received.

1430. The summary below is divided into three parts: a general part (I); specific cases brought to the Special Rapporteurs' attention concerning the conduct of criminal proceedings (II); and new information concerning Mr. Askarov and his co-defendants (III).

Part I:

1431. According to the information received, since the violence erupted in June 2010, 436 bodies have allegedly been found in the south of the Kyrgyz Republic, of which 285 were identified as ethnic Uzbeks and 109 as ethnic Kyrgyz, while the remaining ones remained unidentified as of February 2011, according to official data shared by the General Prosecutor's office and published in a local newspaper *Delo No* on 23 February 2011. In this context, criminal proceedings have been initiated to identify and bring to justice the perpetrators of these acts. However, the alleged unfairness of trials, the unequal treatment in the administration of justice and numerous allegations of torture and ill-treatment have reportedly exacerbated tensions among ethnic communities in the southern part of the country and the general feeling of insecurity, in particular among ethnic Uzbeks.

1. Status of investigations

1432. Two commissions have been established to conduct investigations into the June 2010 events, namely the National Commission of Inquiry and the Parliamentary Commission, were specifically established to that end. According to its report submitted to Parliament on 11 January 2011, the National Commission of Inquiry found that the June 2010 violence had been instigated by ethnic Uzbek community leaders and that law enforcement officials, the majority of whom were ethnic Uzbeks, had committed acts of torture against detainees. Concerns have been raised by some of its previous members regarding its lack of competence and impartiality, in particular with regard to its composition and terms of reference. Two members had reportedly withdrawn their membership prior to the publication of the Commission's findings. Second, a Parliamentary Commission was established to investigate the political causes of the violence, but has not yet published its results.

1433. Despite the figures mentioned above indicating that ethnic Uzbeks were the main victims of ethnic violence, it is reported that investigations and trials have mainly been conducted against ethnic Uzbeks as defendants. We are informed that 5 302 criminal cases have been initiated in relation to the June 2010 violent ethnic clashes, in which 330 persons have been charged, of whom 260 are ethnic Uzbeks, 66 ethnic Kyrgyz and four persons of other ethnicities. Among the 330 persons charged, 290 persons were ordered by courts to be put into pre-trial detention, 240 of whom are ethnic Uzbeks, 48 ethnic Kyrgyz and two persons of other ethnicities.

1434. While the majority of cases are still under investigation, some have reached the trial stage. Many trials resulted in defendants, mostly ethnic Uzbeks, being sentenced to long prison terms following trials which allegedly failed to uphold due process rights and procedural guarantees. More than 58 life sentences have been handed down as of March 2011, the majority of which were upheld by the court of appeal.

1435. It is alleged that a significant number of defendants were subjected to torture and ill-treatment to extract confessions or statements implicating co-defendants. These statements were admitted as evidence in court and in some cases judicial proceedings reportedly relied heavily on them. Judges failed to order prompt and impartial investigations into the allegations of torture.

1436. During the trials, judicial authorities have allegedly failed to take disciplinary measures against individuals – relatives and supporters of victims, who repeatedly disrupted court hearings with ethnic-based violent attacks and verbal abuse against defendants and lawyers. It is alleged that in many cases, defence witnesses were not even summoned by the defence lawyers to give testimonies during court hearings because witnesses feared reprisals from relatives of the victims or from law enforcement officials.

In at least ten trials, relatives of ethnic Uzbek defendants stopped attending hearings after physical attacks or verbal threats by relatives and supporters of the victims.

1437. It is also reported that in at least four appeal trials, the Higher Court failed to conduct a full and genuine review of the conviction or sentence that defendants had received in the first instance courts. For example, on 1 February 2010, Osh Province Court confirmed the decision of Osh City Court, sentencing an ethnic Uzbek defendant to 15 years' imprisonment after a session that lasted approximately 45 minutes.

2. Allegations of torture and ill-treatment

1438. From 27 August 2010 to 31 December 2010, 46 cases of torture and ill-treatment by law enforcement officers have been documented, of which 43 allegedly involved ethnic Uzbeks. In many cases, the authorities have reportedly failed to adequately address allegations of torture. While in many cases, victims have declined to file official complaints, even when complaints are filed, the prosecutor's office appears to have been reluctant to open investigations.

3. Allegations of arbitrary detention

1439. From 27 August 2010 to 31 December 2010, 93 alleged cases of arbitrary detention or unlawful arrest have been documented, of which 92 reportedly involved ethnic Uzbeks. Law enforcement officers reportedly frequently extorted money to secure the victims' release.

Part II - relating to the conduct of criminal trials have been brought to the Special Rapporteurs' attention

1440. On 5 November 2010, Jalal-Abad City Court convicted two ethnic Kyrgyz men of murder of two ethnic Uzbek civilians and other crimes, and sentenced them to 20 and 25 years' imprisonment respectively and to confiscation of private property. Two other ethnic Kyrgyz men were given three year suspended sentences after being found guilty of participation in mass riots and inciting inter-ethnic hatred. It is reported that the decision was handed down after two hearings during which the two defendants, who were sentenced to long prison terms, testified that their confessions were extracted under duress. The judge allegedly failed to declare these confessions inadmissible. On 13 January 2011, at an appeal hearing in Jalal-Abad Province Court, the panel of judges ordered the re-investigation of the case. However, no investigation into the allegations of torture has been initiated.

1441. On 27 December 2010, five ethnic Uzbeks and one ethnic Kazak - were sentenced to life imprisonment and to confiscation of private property for the murder of the Kara- Suu Police Chief and his driver. Three co-defendants - all ethnic Uzbeks - were sentenced to prison terms ranging from five to 20 years on other charges. The verdict was pronounced after an appeal trial that lasted two sessions and left the sentence of the court of first instance unchanged.

1442. The Special Rapporteurs have been informed that lawyers and defendants stated in court that the defendants' confessions were extracted under torture and that the allegations of torture were also contained in appellate motions. In this regard, the Court of Appeal (Osh Provincial Court) reportedly stated that claims of ill-treatment of the accused "ha[d] no grounds" and that the judges relied mainly on evidence contained in confessions of the defendants. At least one lawyer submitted complaints of ill-treatment of two defendants with the prosecutor's office at the end of October 2010. It is reported that they have not been addressed. There are also allegations that law enforcement officers beat several defendants during a break in the court hearing on 29 September 2010. Furthermore, two

lawyers have allegedly been punched by relatives of the victims outside the courtroom on 30 September 2010.

1443. On 2 February 2011, the Osh Province Court affirmed the verdict of Osh City Court sentencing an ethnic Uzbek defendant to life imprisonment after finding him guilty of the murder of two police officers and participation in mass disorders in June 2010. Three co-defendants, all ethnic Uzbek, were sentenced to prison terms ranging from three to 14 years for participation in mass disorders and deliberate destruction of property.

1444. The Special Rapporteurs have been informed that the defendants stated in court that they were tortured or ill-treated and forced to confess or implicate other suspects. Judges in both the first and second instance courts reportedly failed to order an investigation into these allegations, or to exclude confessions allegedly extracted under torture. The Court of Appeal allegedly failed to act in an impartial manner. In a court hearing on 2 December 2010, the presiding judge rejected a defendant's withdrawal of his previous confession. Photos reportedly showing injuries resulting from the ill-treatment of one defendant were rejected, apparently because they did not show the defendant's face.

1445. There are also reports of acts of intimidation and physical attacks against defendants, their relatives and lawyers. On 13 October 2010, outside the court building, victim's relatives punched and kicked one defendant, three defendants' relatives and a lawyer. The defendant and three relatives sought medical help for concussions and severe injuries. A car belonging to the defendants' relatives was vandalised. At a hearing on 29 November 2010, victims' relatives interrupted the trial shouting obscenities and threats at the defendants, their relatives and lawyers. While the judge called for respect for order in the courtroom, he did not warn or discipline any of the members of the audience. At another hearing on 14 December 2010, despite a heightened security presence, relatives and supporters of the victims allegedly threw stones at the defendants inside the court after members of the security forces stopped them in their attempts to attack the defendants. A number of police officers were reportedly hit, while judges, lawyers and prosecutors had left the courtroom prior to the attack.

1446. On 16 December 2010, Osh Province Court confirmed the decision of Osh City Court, acquitting Mr. Farruh Gapirov of charges of illegal possession of weapons and participation in mass riots. On 26 October 2010, the decision rendered by Osh City Court stated that Mr. Gapirov was beaten and forced to confess to the crime of which he was accused. The judges therefore excluded the confession. The judges reportedly also issued a special ruling requesting the prosecutor to consider the allegations of torture. However, as of March 2011, no investigation has been initiated.

Part III

1447. On 10 November 2010, the Court of Appeal had found Mr. Askarov and four co-defendants guilty of murder of a police officer, inciting inter-ethnic hatred and organizing mass disorders and sentenced them to life imprisonment and confiscation of property. Three other co-defendants were sentenced to between nine and 20 years' imprisonment. According to recent information received in respect of these cases:

1448. On 26 January 2011, the Supreme Court commenced the review of the case of Mr. Askarov and seven co-defendants in Bishkek. On 8 February 2011, the Court accepted a motion by Mr. Askarov's defense lawyer requesting a separate decision, along with the verdict, to address the legality of keeping defendants in the temporary police detention facility (IVS) for an extended period of time, as Jalal-Abad has no pre-trial detention facility (Sizo). The judges ordered an investigation into the conditions of detention in Jalal-Abad and postponed the trial for an indefinite period.

1449. A lack of private meetings between Mr. Askarov and his lawyer has been reported, undermining the capacity to prepare Mr. Askarov's defence. Lawyers complained about the lack of confidentiality, to which the Judge reportedly responded that he was not in the position to ensure confidential access to legal representatives.

1450. The authorities repeatedly failed to provide adequate medical care to the defendants. In November 2010, there was grave concern about the health of Mr. Askarov as well as the other defendants. Mr. Askarov was reportedly in need of urgent medical attention and treatment for injuries likely to have resulted from the alleged torture. On 12 November 2010, Mr. Askarov was reportedly transferred to a detention facility in Bishkek (Colony No. 47), where he received medical treatment and has been detained to date.

1451. Furthermore, relatives of the victims repeatedly physically assaulted and verbally harassed defendants and their lawyers, which included ethnic insults, inside and outside courts. On 4 November 2010, four hand-written posters hung in the courtroom, one of them calling for "the sadist murderers to be sentenced to death."

1452. Concern was expressed that the conviction of Mr. Askarov may be related to his peaceful activities as a human rights defender, in particular to monitoring and recording the violence and arson attacks related to the recent ethnic violence in Jalal-Abad Province.

Observations

1453. The Special Rapporteur thanks the Government for the responses transmitted to four of the five communications sent during the reporting period dated. However, he regrets that at the time of finalization of this report, the Government had not transmitted a response to his communication of 16 March 2011, and to earlier communications sent on 22 December 2009 and 16 April 2009. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Lebanon

Lettre d'allégation

1454. Le 1^{er} octobre 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant la situation de **M. Ismael Shaikh Hassn**, un urbaniste libano-palestinien de renom, spécialisé dans les questions ayant trait à la reconstruction de camps de réfugiés.

1455. Selon les informations reçues, le 18 août 2010, M. Ismael Shaikh Hassn aurait été arrêté par les services secrets libanais au point de contrôle militaire Al-Abdeh au camp Nahr el Bared, alors qu'il essayait de pénétrer dans ce camp. Le camp, qui compterait 30.000 civils, serait déclaré « zone militaire » depuis 2007.

1456. Le 21 août 2010, M. Ismael Shaikh Hassn aurait été libéré sans qu'aucune charge ne soit retenue contre lui.

1457. Il est allégué que cette arrestation ferait suite à la publication d'un article de M. Ismael Shaikh Hassn dans le quotidien libanais *Assafir* le 12 mai 2010 dans lequel il critiquait les difficultés rencontrées dans le processus de reconstruction du camp Nahr el Bared, ainsi que les mesures de sécurité prises par les militaires dans ce camp au cours des trois dernières années, notamment l'imposition d'un permis d'entrée qui serait grandement préjudiciable à la vie économique du camp. Suite à la publication de cet article, M. Ismael Shaikh Hassn aurait reçu des menaces.

1458. Des craintes ont été exprimées quant au fait que l'arrestation et la détention de M. Ismael Shaikh Hassn soient liées à ses activités de défense des droits de l'homme, et ce dans l'exercice de son droit à la liberté d'opinion et d'expression.

Réponse du Gouvernement

1459. Dans une lettre datée du 10 novembre 2010, le Gouvernement a indiqué que, selon la direction générale de la sûreté générale, M. Ismael Shaikh Hassn n'a jamais été arrêté.

Lettre d'allégation

1460. Le 18 novembre 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant la situation de M. **Ghassan Abdallah**, président de l'organisation non-gouvernementale *Organisation palestinienne des droits de l'homme* (Palestinian Human Rights Organisation - PHRO) qui promeut et protège le droits des réfugiés palestiniens au Liban. M. Abdallah a fait l'objet d'un appel urgent envoyé par le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme le 27 juin 2008. Nous accusons réception de la réponse du Gouvernement de votre Excellence reçue le 23 septembre 2008.

1461. Selon les nouvelles informations reçues, le 5 octobre 2010, M. Abdallah aurait reçu un appel téléphonique du Colonel Asmar, Chef de l'unité d'enquête au sein du service de renseignements de la base militaire à El-Qubeh, l'invitant à se rendre à la base pour « prendre un café ».

1462. Dans la matinée du 9 octobre 2010, M. Abdallah se serait rendu au bureau du Colonel Asmar où il aurait été interrogé pendant trois heures. L'interrogatoire, qui n'aurait pas été enregistré, aurait porté, entre autres, sur l'appartenance depuis 2002 de la PHRO au Réseau euro-méditerranéen des droits de l'homme (REMDH), un réseau de renommée internationale représentant des organisations de défense des droits de l'homme, des institutions et des personnes situées dans 30 pays de la région euro-méditerranéenne. M. Abdallah aurait été accusé d'entretenir des liens avec le REMDH, qui selon l'interrogateur, inclurait d'autres organisations présentées comme étant « sionistes ». M. Abdallah aurait également été interrogé sur les activités d'un nouveau bureau de la PHRO au camp de réfugiés palestiniens Nahr al-Bared, ainsi que sur un séminaire organisé par la PHRO sur la question de l'accès aux camps de réfugiés palestiniens. M. Abdallah aurait été informé par le Colonel Asmar que la décision de l'interroger émanait d'ordres provenant du commandement.

1463. Le Colonel Asmar aurait déclaré à M. Abdallah que dorénavant, à chaque fois qu'il souhaitait renouveler son permis d'accès au camp, celui-ci devrait se rendre au service de renseignements dans le nord.

1464. Au cours de l'interrogatoire, le Colonel Asmar se serait absenté de la salle pendant une heure et trente minutes. Durant cette absence, M. Abdallah aurait entendu, en provenance d'une autre pièce, des cris, ainsi que des références faites à haute voix quant à l'usage d'un instrument de torture.

1465. Des craintes ont été exprimées quant au fait que l'interrogatoire de M. Abdallah et les actes d'intimidation à son égard soient en relation avec ses activités légitimes de promotion et défense des droits de l'homme. Des craintes similaires sont exprimées quant à son intégrité physique et mentale et celle des membres de la PHRO.

Observations

1466. Le Rapporteur spécial remercie le Gouvernement de sa réponse, mais regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 18 novembre 2010, 7 décembre 2005 et 9 juin 2005. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits.

Libyan Arab Jamahiriya

Urgent Appeal

1467. On 23 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders, the Chair-Rapporteur of the Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government concerning the **deaths of at least 233 people and the excessive use of force against protesters by security forces in the context of the ongoing peaceful demonstrations**, which have taken place across the country since 15 February 2011, calling for democratic reforms and fundamental freedoms.

1468. According to the information received, after 14 protestors had been shot dead by security forces, thousands of people gathered for funeral prayers, resulting in the eruption of violence on 19 February 2011, in the city of Benghazi. Reports indicate that security officers fired indiscriminately on protesters, causing several deaths and leaving many injured, most of whom showed gunshot wounds in the head, neck and shoulders.

1469. In the context of the ongoing protests, security forces are using live ammunition, including machine gun fire against demonstrators in the cities of al-Bayda and Benghazi. According to unconfirmed reports, military aircraft would have been used against protestors in Tripoli and other cities. There have also been reports that the authorities have allegedly enlisted the assistance of 'mercenaries' brought in from other countries to deal with demonstrators in Benghazi and other cities. Due to the excessive use of force, the death toll since 17 February 2011, is at least 233 people.

1470. The Special Rapporteurs have received information on the death of the following people: Naji Jumaa Jordane Al Kawafi, aged 18; Motaz Abdel Ati Al Darouqi, aged 19; Hamad Al Allam, aged 27; Faouzi Hussein Al Sabiri, aged 36; Marwan Al Shattat, aged 20; Mohamed Salem Boujnah, aged 21; Idris Ali Raslan Al Maghribi, aged 13; Rami Saleh Al Maghribi, aged 18; Moayed Fathi Boujlaoui, aged 26; Mohamed Abdeladim Al Saiti; Aboubakr Fathi Al Tachani; Ahmed Kamal Al Chahini; and Salem Abou Madi.

1471. In addition, the following cases of arrests of human rights defenders and activists, including their family members, have been brought to the attention of the Special Rapporteurs.

1472. Four brothers, Mr. Al Mahdi Saleh Hmeed, a lawyer and human rights defender; Mr. Sadek Saleh Hmeed, a taxi driver; Mr. Ali Saleh Hmeed, a taxi driver; and Mr. Fredj Saleh Hmeed, an employee, were arrested in their home in Alhadbah Al Khadraa, Tripoli, on Tuesday 16 February 2011, at 16:00 while being interviewed by Mr. Mohamed Srit, a journalist. Mr. Srit was also arrested and released later that evening. The four brothers are,

reportedly, being held in an undisclosed location by the Libyan security forces and have not been charged. Their fate and whereabouts are unknown.

1473. The Special Rapporteurs have also received information concerning the arrest of Mr. Fathi Tarbal, a lawyer and human rights defender who actively worked on reporting cases of human rights violations to international organizations. Mr. Fathi Tarbal was arrested from his home on 15 February 2011, by members of the Libyan Interior Security (Amn al Dakhli) who reportedly entered his home, searched the entire house without presenting a warrant and confiscated his laptop and cell phones before taking him away. Mr. Tarbal had been closely following and reporting on the peaceful protests that are taking place in the country, including arrests and alleged use of force against demonstrators by the part of the security forces. Mr. Tarbal was released shortly after his arrest.

1474. Furthermore, unconfirmed reports indicate that a total of 17 activists, lawyers and former political prisoners have been arrested since the demonstrations began, including Mr. Abdelhafuz Ghogha, a prominent human rights lawyer who represented the families of those killed in the Abu Salim prison in 1996.

1475. Moreover, reports indicate that the authorities have cut all landline and wireless means of communication in the country. Websites have also reportedly been blocked, including the Al-Jazeera news website, as well as social networking sites such as *Twitter* and *Facebook*. Additionally, Al-Jazeera's broadcast has reportedly been jammed on Arabsat satellite network.

1476. Concerns were expressed about the physical and mental integrity of the Hmeed brothers, Mr. Abdelhafuz Ghogha, and 17 activists, lawyers and former political prisoners who have been arrested since the demonstrations began. In addition, given the restrictions on the means of communications, further concern was expressed that many of the violations that are taking place in connection with the demonstrations cannot or are not being reported.

Urgent Appeal

1477. On 14 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government concerning the situation of Mr. **Ghaith Abdul-Ahad**, Iraqi national, working as a reporter for The Guardian newspaper since 2004, and Mr. **Andrei Netto**, a Brazilian journalist for the Brazilian newspaper O Estado de Sao Paulo.

1478. According to the information received, on 10 March 2011, Mr. Ghaith Abdul-Ahad and Mr. Andrei Netto were reportedly abducted by Government forces while travelling in the area called Zawiyah in western Libya where they have allegedly been reporting on clashes between rebels and local security forces that have reportedly been taking place since the peaceful demonstrations started on 15 February 2011.

1479. It is reported that Mr. Abdul-Ahad was last in touch with the daily he works for on 6 March 2011, but no news from him has been received since then. Following several media inquiries, the Libyan authorities have reportedly admitted holding the two journalists, but have refused to inform of their whereabouts.

1480. It is also reported that on 7 March 2011, three BBC journalists, Mr. **Goktay Koraltan**, a Turkish national; Mr. **Feras Killani**, a Palestinian Syrian; and Mr. **Chris Cobb-Smith**, a British national, were abducted by security forces at a checkpoint near Az Zawiyah, taken to a military barracks in Tripoli, beaten and subjected to a mock execution

by members of Libya's army and secret police before being released 21 hours later. They fled the country immediately afterwards. In this connection, on 10 March 2011, the United Nations High Commissioner for Human Rights issued a press release, condemning the detention and possible torture of BBC news team of three as it sought to cover the situation in the western Libyan city of Zawiyah.

1481. In this context, the attention of the Government was drawn to the joint urgent appeal sent on 23 February 2011 by the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Chair-Rapporteur of the Working Group on the use of mercenaries; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, concerning the deaths of at least 233 people and the excessive use of force against protesters by security forces in the context of the ongoing peaceful demonstrations which have taken place across the country since 15 February 2011. It was noted that to date, no response has been received with respect to the circumstances regarding the cases of the persons named therein.

1482. In view of the allegation according to which the fate and whereabouts of Mr. Ghaith Abdul-Ahad and Mr. Andrei Netto remain unknown, concern was expressed about their physical and mental integrity. Further concern was expressed regarding allegations received indicating that their disappearance is connected to their work as journalists covering the situation in Zawiyah and reporting about human rights violations.

Urgent Appeal

1483. On 18 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding a number of **recent cases of enforced disappearances** that have allegedly occurred in the Libyan Arab Jamahiriya.

1484. According to information received, Mr. **Safa Aldin Hilal Mohamed Al Shareef**, 25 years old, Libyan citizen, engineer in the oil company of Ras Lanouf, resident in Al Baid, was allegedly arrested by Internal Security Forces agents at his workplace in Ras Lanouf, on 15 February 2011. It is alleged that this disappearance may be linked to the fact that he was allegedly running a group on an online social network calling for democratic demonstrations;

1485. Mr. **Adel Abdallah Almadaa Salah**, 35 years old, Libyan citizen, resident in Al Baida, was allegedly arrested by Internal Security Forces agents in a hotel in Tripoli on 18 February 2011, as he was allegedly calling for democratic demonstrations in the capital;

1486. Mr. **Abdalsalem Alqanashi**, 35 years old, Libyan citizen, media activist, resident in Al Baida, was allegedly arrested by internal security forces agents at the Libyan-Egyptian border on 19 February 2011, as he was photographing and filming the demonstrations and the reaction of the security forces agents;

1487. Mr. **Ali Mubarak Omran**, 55 years old, Libyan citizen, officer in the Armed Forces, resident in Al Abrak, was allegedly arrested by a group of persons supporting the central military troops at Al Abrak airport on 19 February 2011, because he allegedly refused to fire on the demonstrators;

1488. Mr. **Alsadek Almabrouk Hamada Bridan**, 48 years old, Libyan citizen, teacher, resident in Bab al Shaha Al Gharbia, near Ali Ibn Ali Abu Talib – Derna, allegedly

disappeared from Abu Slim prison when internal security forces were evacuating the prisoners on 16 February 2011.

1489. In addition, sources have reported that the persons mentioned below were abducted by a group of people allegedly supporting the central military troops stationed at Al Abrak airport during confrontations against the pro-democracy demonstrators in Al Abrak. These persons are: Mr. **Abdalkarim Mohamed Abdalkarim**, 25 years old; Mr. **Salah Almabrouk Saad**, 33 years old; Mr. **Abdallah Abdalsilam Khalifa**, 32 years old; Mr. **Nasser Amar Ali**, 43 years old; Mr. **Farj Amar Ali**, 28 years old; Mr. **Assam Mohamed Abdalrazak Shahat**, 22 years old; Mr. **Ali Mohamed Salah**, 23 years old; Mr. **Souad Ali Boumbrika**, 40 years old; Mr. **Abdessalam Youness**, 30 years old; and, Mr. **Adam Masaoud Mohamed Idriss**, all Libyan citizens. According to the information received, they were all brought to Al Abrak airport where they were last seen on 19 February 2011, before military officers allegedly took them to an unknown location.

1490. Sources have also reported that hundreds of recruits of the Air Force Academy allegedly disappeared, some of whom were allegedly shot dead while trying to escape. Sources additionally report about an alarming figure of hundreds of persons that are allegedly detained in unknown places.

Urgent Appeal

1491. On 31 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal to the Government regarding **continuing attacks against journalists in the Libyan Arab Jamahiriya**.

1492. While the Special Rapporteurs welcomed the release on 21 March 2011 of four *New York Times* journalists (Mr. Anthony Shadid, Mr. Stephen Farrell, Ms. Lynsey Addario and Mr. Tyler Hicks), who were captured in eastern Libya by forces allegedly loyal to Colonel Muammar el-Qaddafi, concern was expressed about the safety of journalists in the Libyan Arab Jamahiriya. In particular, concern was expressed with regard to reports of **two journalists who have been killed, as well as 14 journalists who have either disappeared or have been reported to be in the custody of the Government, but whose whereabouts remain unknown**.

1493. It was noted that since the beginning of demonstrations on 15 February 2011, three communications have been sent to the Government dated 18 March 2011, 14 March 2011 and 23 February 2011 by the Special Procedures' mandate-holders, including concerns regarding attacks against, detention and disappearance of journalists and human rights defenders. Regret was expressed that no response has yet been received to these communications.

1494. According to new information received, 14 journalists have either disappeared or have been reported to be in the custody of the Government, but whose fate and whereabouts remain unknown, namely:

1. Mr. Ahmand Val Wald-Eddin (or Vall Ould Addin or Vall Ould el-Dine), Al-Jazeera correspondent, national of Mauritania;
2. Mr. Lufti Al-Massoudi (or Lotfi al-Messaoudi), Al-Jazeera correspondent, national of Tunisia;
3. Mr. Ammar Al-Hamdan, Al-Jazeera cameraman and photographer, national of Norway; and

4. Mr. Kamil Al-Tallou (or Kamel Atalua), Al-Jazeera cameraman, national of the United Kingdom.

1495. According to the information received, Al-Jazeera personnel have had no contact with them for almost two weeks after the journalists entered Libya near Zantan, at the Libyan-Tunisian border. Sources report that these persons were arrested by Libyan authorities in the western part of the country. The journalists were reportedly covering the fighting between the Government and rebel forces in Zawiya.

5. Mr. Dave Clark, aged 38, reporter with Agence France-Presse;
6. Mr. Joe Raedle, photographer at Getty Images; and
7. Mr. Roberto Schmidt, aged 45, reporter with Agence France-Presse.

Their last whereabouts were allegedly received via e-mail on the night of 18 March 2011, while they were about to leave Tobruk city to meet with rebel forces. Their fate and whereabouts remain unknown since then. Concerns are raised about the vulnerability of journalists while working in the zone of conflict and the risk of being deprived of their liberty or subjected to enforced disappearance.

8. Mr. Atef al-Atrash, contributor to local news outlets;
9. Mr. Mohamed al-Sahim, blogger and critical political writer;
10. Mr. Mohamed al-Amin, cartoonist;
11. Mr. Idris al-Mismar, writer and former editor-in-chief of Arajin, a monthly culture magazine;
12. Ms. Salma al-Shaab, head of the Libyan Journalists Syndicate; and
13. Mr. Suad al-Turabouls, correspondent for the pro-government Al-Jamahiriyah.

It has been reported that they were deprived of their liberty by forces loyal to the Government. Their fate and whereabouts remain unknown.

14. Mr. Stéphane Lehr, photographer at Polaris Images, national of France, allegedly disappeared on 20 March 2011. According to the information received, his last communication was received shortly after he left Benghazi to Ajdabiya, at 1:00 p.m. local time.

In addition, information has been received concerning the killing of two journalists:

1. Mr. Ali Hassan Al-Jaber, cameraman of Al-Jazeera, who was killed in an ambush on 12 March 2011 as he was returning from Benghazi; and
2. Mr. Mohamed Al-Nabbous (also known as "Mo"), Libyan blogger and journalist with the TV station Libya Al-Hurra. According to the information received, he was shot dead on 19 March 2011, as he was providing live commentary regarding recent developments in the Libyan Arab Jamahiriya.

1496. Concern was expressed regarding the continuing targeting of journalists, including killings, arbitrary detention, and detention without disclosure of their fate or whereabouts, which would amount to enforced disappearance. Further concern was expressed regarding the vulnerable conditions of work of journalists to report in situations of armed conflict, and the potential risk of being subjected to detention, arrest or other forms of deprivation of liberty in an unknown location.

Observations

1497. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his five communications of 31 March 2011, 18 March 2011, 14 March 2011, 23 February 2011, and an earlier communication sent on 22 January 2009. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

1498. On 18 February 2011, the Special Rapporteur expressed his concerns regarding the use of excessive and lethal force against peaceful protesters in Libya through a public statement, issued jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and Chair-Rapporteur of the Working Group on Arbitrary Detention.⁶⁸ In the statement, the Special Rapporteur also called upon the authorities to ensure that journalists can work safely and freely to inform the public locally and globally of what is happening, and that all means of communication, including the Internet, remain open and accessible.

1499. The Special Rapporteur remains concerned by reports of continued repression of the right to freedom of opinion and expression in Libya, including arrests and prosecution of individuals who are critical of the Government on the basis of laws that criminalize peaceful dissent, such as the Penal Code and Law 71 of 1972, which prescribe severe punishments, including the death penalty. The Special Rapporteur urges the Government to release all prisoners who have been detained for peacefully exercising their legitimate right to freedom of opinion and expression, and to immediately end violence and all attacks against civilians and to address the legitimate demands of the population, including through national dialogue, as called for in Security Council resolution 1973 (2011).

Madagascar

Appel urgent

1500. Le 18 novembre 2010, le Rapporteur special, conjointement avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire, a envoyé un appel urgent sur la situation expliquée ci-dessous.

1501. Conformément aux informations reçues :

1. Monsieur Fetison RAKOTO ANDRIANIRINA, dirigeant du Mouvement Marc Ravalomanana;
2. Monsieur Stanislas ZAFILAHY, député, Chef du groupe parlementaire "légaliste";
3. Pasteur Edouard TSARAHME, leader du Mouvement Zafy Albert;

et 18 autres manifestants, auraient été arrêtés le 11 novembre 2010 à Antananarivo par des membres de la Commission Nationale Mixte d'Enquête (CNME).

1502. Selon les informations reçues, la manifestation contre le référendum organisée par le Gouvernement au Stade de Malacam Antanimena aurait été autorisée. Cependant,

⁶⁸ "Bahrain/Libya: UN Experts urge authorities to guarantee right to protest without fear of being injured or killed", 18 February 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10737&LangID=E>.

postérieurement, les autorités auraient empêché la tenue de la manifestation, ce qui aurait provoqué la colère des manifestants. Il y a eu des affrontements et quelques véhicules auraient été incendiés.

1503. Les trois personnes mentionnées ci-dessus seraient accusées de « participation à une réunion sans autorisation, de refus d'ordre de dispersion et de destruction de biens privés ». Elles auraient été placées sous mandat de dépôt sur décision du parquet d'Antananarivo et envoyées à la prison d'Antanimora. Leur jugement devrait avoir lieu le 23 novembre 2010. Les autres 18 manifestants auraient également été mis sous mandat de dépôt.

1504. Selon la source, ces personnes auraient été arrêtées simplement pour avoir exercé de manière pacifique leurs droits à la liberté d'opinion, d'expression et de rassemblement.

Observations

1505. Le Rapporteur spécial remercie le Gouvernement de sa réponse, mais regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 18 novembre 2010, 2 juin 2009 et 24 février 2009. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits.

Malawi

Allegation letter

1506. On 30 December 2010, the Special Rapporteur sent a letter of allegations to the Government concerning the **recent proposed legislation in the Parliament of Malawi**, which, if signed by the President, would pose a threat to freedom of the press.

1507. According to information received, on 19 November 2010, the Parliament of Malawi passed an amendment to section 46 of the Penal Code on the "power to regulate publications", which would allow the banning of newspapers from circulation at the Minister's discretion: "If the minister has reasonable grounds to believe that the publication or importation of any publication would be contrary to the public interest, he may, by order published in the Gazette, prohibit the publication or importation of such publication."

1508. In comparison to the previous text of the Penal Code, which gave the Ministry powers to regulate importation based on public interest, the proposed amendment appears retrogressive.

1509. The proposed amendment contravenes Section 36 of the Constitution of Malawi on "freedom of the press" which stipulates that, "[t]he press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to public information."

Urgent appeal

1510. On 28 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the situation of Mr. **Undule Mwakasungula, as well as the general situation of human rights defenders in Malawi**. Mr. Mwakasungula is the Executive Director of the Centre for Human Rights and Rehabilitation (CHRR), a Malawian NGO which was established in 1995 with the objective of promoting good governance within the framework of international human rights instruments and Malawi's national constitution.

1511. According to the information received, on 20 March 2011, Mr. Mwakasungula received death threats via telephone from unknown individuals. It is alleged that first caller accused Mr. Mwakasungula of trying to tarnish the Government's image and undermine the work and role of President Bingu wa Mutharika. The caller reportedly told Mr. Mwakasungula that he would be dealt with using whatever means necessary. During the second phone call, it is alleged that the caller threatened to kill Mr. Mwakasungula and urged him to exercise caution. The caller made reference to the manner in which Mr. Mwakasungula carried out his human rights work claiming that the underlying objective of his work was to influence the outcome of Presidential elections set to take place in 2014.

1512. It is reported that on 9 March 2011, armed police officers visited Mr. Mwakasungula's home in Karonga. It is alleged that the police officers claimed this was a routine check.

1513. According to the information received, on 3 March 2011, at approximately 2:30 a.m., a group of unidentified individuals broke into the CHRR offices in Lilongwe. They were allegedly in possession of machetes, knives and petrol. It is reported that nothing was stolen during the break-in; however the unidentified individuals demanded that the security guard on duty provide them with Mr. Mwakasungula's home address. It is reported that the security guard told the group of individuals that he did not know Mr. Mwakasungula's home address. The security guard was allegedly severely beaten by the group of individuals and abandoned near Area 18 Roundabout. The incident was later reported to police at Area Lingadzi police station.

1514. With regard to the general situation of human rights defenders in Malawi, it is reported that the death threats against Mr. Mwakasungula, as well as the break-in at the CHRR offices form part of an ongoing campaign against human rights defenders in Malawi. It appears that the campaign against civil society has intensified in recent weeks, as the Government reportedly began a public campaign of intimidation against human rights defenders in a bid to prevent public demonstrations demanding reforms. It is alleged that Government officials have publicly stated that they are prepared to utilise any means necessary in order to quell the climate of discontent.

1515. On 14 February 2011, police in Lilongwe City banned a peaceful march organised by civil society.

1516. On 23 February 2011, civil society groups issued a public statement condemning the recent wave of intimidation against them. It is reported that following the issuance of such a statement, the Human Rights Consultative Committee, a coalition of 90 organisations, received a letter signed by the National Youth Forum threatening to close down the coalition.

1517. On 6 March 2011, President Bingu wa Mutharika held a rally in Blantyre in order to demonstrate in relation to the high level of support which exists for the ruling Democratic Progressive Party. President Bingu wa Mutharika allegedly called on those present to support the Government and to fight those who opposed the views of the Government. It is alleged that President Bingu wa Mutharika announced that anyone wishing to organise a public protest would be required to seek permission, which would be subject to payment of a deposit of 2 million Kwacha, (13,000 USD).

1518. On 7 March 2011, top Government officials again reiterated the sentiment of the President, that those opposing the President would be silenced by any means necessary.

1519. It is further reported that the President recently made comments regarding a group of human rights defenders who presented a statement at the 16th session of the UN Human Rights Council in Geneva. It is alleged that the President stated that "there is a group of 15 people roaming in Europe saying that there is a violation of human rights because we don't

allow university professors to teach revolution... We are waiting for them to come back and to tell us what their agenda is". A local newspaper reportedly published an article alluding to the possibility that UN aid to Malawi may be cut if human rights defenders continue "irresponsible reporting" to the Human Rights Council. Some Malawian newspapers, which are allegedly controlled by the State, reportedly criticised human rights defenders for what they perceived as a presentation on behalf of the human rights defenders with the objective of reporting the President to the UN Special Rapporteur on the situation of human rights defenders.

1520. Serious concern was expressed for the physical and psychological integrity of Mr. Mwakasungula considering the death threats issues against him in recent days. Concern was also expressed that the situation of Mr. Mwakasungula, as well as the break-in of CHRR offices, may be linked to the legitimate work of the organization in the defence of human rights.

Observations

1521. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to his communications sent during the reporting period dated 20 December 2010 and 29 March 2011, and to a communication sent earlier on and 9 March 2010. The Special Rapporteur considers response to his communications an important part of the cooperation between governments and his mandate and requests that the Government of Malawi provide details about the issues raised in the aforementioned communications.

1522. The Special Rapporteur would also like to express his concern regarding reports of an increasing climate of intolerance of critical views and expression, particularly those that are critical of the Government. The Special Rapporteur thus urges the Government of Malawi to guarantee the right of all individuals to freedom of opinion and expression and to promote an environment of tolerance of divergent views and opinions.

Maldives

Allegation letter

1523. On 20 May 2010, the Special Rapporteur, together with the Special Rapporteur on freedom of religion or belief, sent a letter of allegations to the Government regarding provisions in the draft "**Regulations on protecting religious unity of Maldivian Citizens**".

1524. According to the information received, in May 2010, the Ministry of Islamic Affairs drafted new "Regulations on protecting religious unity of Maldivian Citizens" and submitted the draft Regulations to the Office of the President for gazetting. Concern is expressed that a number of provisions in the draft Regulations, if enacted in this form, may seriously hamper several human rights, including freedom of religion or belief and freedom of opinion and expression.

1525. Article 2 of the draft Regulations enumerates their aims, including "to maintain the religious harmony existing among Maldivians; solve conflicts that arise from disagreement among Islamic scholars on religious issues; ensure that information regarding such issues are spread so as not to sow discord in society; [...] maintain religious unity of Maldivian citizens [...]". Article 12 of the draft Regulations envisages the "revoking or temporary suspension of licenses" for violating the regulations and enables stopping "any persons whose actions are deemed to be threatening religious unity".

1526. Among the criteria for giving preaching licenses according to article 16 (b) of the draft Regulations, is the requirement that “the person must belong to any sect of the Sunni Muslims” and must have reached 25 years of age. In addition, article 19 of the draft Regulations stipulates that “foreign preachers who are given permission under these regulations should shape their sermons in reference to the Maldives culture and traditions”. Article 21 of the draft Regulations would impose “an obligation on the Government and all the people of Maldives to protect the religious unity of Maldivian citizens as Maldives is a 100 percent Muslim nation and because Islam maintains harmony of Maldivian citizens and because Islam is the basis of the unity of Maldivian citizens”.

1527. Article 24 of the draft Regulations would give the authority to deport anyone who propagates any religion other than (Sunni) Islam. Article 27 of the draft Regulations would prohibit, for example, “promoting one’s own individual opinion on issues that are in disagreement among Islamic scholars”, “inciting people to disputes” and “talking about religions other than Islam in Maldives”. Similarly, it would be prohibited to build places of worship of other religions (article 30), to commit any action that may offend Islamic thought (article 32), for Non-Muslims to express their religious beliefs or carry out their religious activities (article 33) and to propagate any religion other than Islam (article 34).

1528. Article 35 of the draft Regulations would make it “illegal to show or spread sound bites of programs on religions other than Islam, and any such literature, drawings, advertisements, music, and songs”, “to use any Internet website, blog, newspaper, or magazine to publish such material” and “to depict advertisements and make announcements in a way that affects Islamic way of life”.

1529. The Special Rapporteurs appealed to the Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights (ICCPR). The Covenant, *inter alia*, guarantees “freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”. In addition, according to article 27 of the Covenant, persons belonging to religious minorities shall not be denied “the right, in community with the other members of their group, [...] to profess and practise their own religion”.

1530. The Special Rapporteurs also referred to the conclusions and recommendations in the 2006 mission report of the Special Rapporteur on freedom of religion or belief, indicating that she was “disturbed by provisions of the Law on Religious Unity, which criminalize any action or form of expression intended to disrupt, jeopardize or disunite social and religious order and harmony, and considers that the law has the potential to limit the manner in which people choose to manifest their religion or belief. She considers that the law may fail to satisfy the requirement that any limitations on the right to manifest one’s religion or belief must be prescribed by law and must be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others” (A/HRC/4/21/Add.3, para. 63). In addition, she emphasized that restricting citizenship to people with certain religious beliefs is contrary to the principle of non-discrimination (A/63/161, paras. 39 and 70) and she encouraged the Maldivian legislators to consider introducing amendments to the citizenship law to bring it into compliance with treaty obligations, particularly with regard to non-discrimination provisions (A/HRC/4/21/Add.3, para. 67).

1531. Moreover, the Special Rapporteurs drew the attention of the Government to article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and

ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

1532. The Special Rapporteurs also noted that in his 2009 mission report to the Maldives, the Special Rapporteur on the right to freedom of opinion and expression also noted human rights concerns: "He further observed that people are prevented both by legislative provisions and through social pressure from expressing their views about issues relevant to religion or belief and as a result exercise self-censorship. The Special Rapporteur was informed of a recent case in which a journalist had been threatened due to comments made about religious beliefs in the country" (A/HRC/11/4/Add.3, para. 46).

1533. The Special Rapporteurs therefore urged the Government to reconsider the draft Regulations, specifically taking into account the international human rights standards on freedom of religion or belief and freedom of opinion and expression. To this end, the Special Rapporteurs called upon the Government to allow for further debate and revision of the draft Regulations due to concerns that their implementation could have a significant negative impact on human rights in the country.

Response from the Government to a communication sent earlier

1534. In a letter dated 1 September 2010, the Government responded to a communication sent jointly with the Special Rapporteur on the situation of human rights defenders dated 4 October 2005 regarding *Minivian*, the only independent newspaper and the biggest selling newspaper in the Maldives, as follows.

1535. The Government would like to inform that since the inception of a democratic system of government in the Maldives on 11 November 2008, following the first ever multi-party elections in the country, the Maldives has made tremendous progress towards guaranteeing human rights for all in its territory. As such, the persons referred to in the abovementioned letter have long been released. Furthermore, Ms Aminath Najeeb currently sits on the board of Maldives National Broadcasting Corporation (MNBC) and is a prominent journalist in the country, while Mr. Paul Roberts and Mr. Shauaib Ali both hold responsible posts at the President's Office.

1536. In addition, the Government would like to note that local as well as foreign journalists are free from any form of threat and/or harassment from the Government of Maldives and are free to express their thoughts and opinions, within the purview of the Constitution of the Maldives. The new Constitution ratified in August 2008 explicitly provides for freedom of the press and the Government does not prevent the media from disseminating and publishing news freely and independently. At present, press freedom is at an all time high, with frequent television and radio programmes and articles criticizing government policy and top government officials. Notably, the 2009 World Press Freedom Ranking, compiled by Reporters with Borders, declared the Maldives in 51st place; a prominent advancement for a country in the list with a previous position of 104th place. This, as Your Excellencies would agree, is a remarkable achievement for the new democratic Government of the Maldives.

1537. From a legislative point of view, laws relating to media freedom and the rights to information are at various stages of the law-making process. In November 2008, the Maldives Media Council Bill was ratified by the President. The Act established the Council as an independent, self regulatory body with responsibility for, *inter-alia*, establishing and preserving the freedom of media in the country, and conducting inquiries into complaints filed with the Council concerning the abuse of media freedom.

1538. A year later, in November 2009, the Majils adopted a Bill abolishing several articles of the current Penal Code under which defamation was prescribed a criminal offence. Most recently, The Maldives Broadcasting Corporation Act was enacted in April 2010.

1539. In light of these achievements, the Government wishes to assure you that the Government of Maldives is undertaking all necessary steps to secure the right to freedom of opinion and expression and wish to convey that we are sincerely committed to maintaining our international human rights obligations, as well as fully guaranteeing all the rights and freedoms prescribed in the Constitution of the Maldives.

Observations

1540. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 25 May 2010. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Mauritania

Lettre d'allégation

1541. Le 22 février 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur les formes contemporaines d'esclavage, y compris leurs causes et leurs conséquences et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé une lettre d'allégation concernant la situation de **M. Biram Ould Dah Ould Abeid**, conseiller auprès de la Commission nationale mauritanienne des droits de l'Homme, président de l'Initiative de résurgence du mouvement abolitionniste en Mauritanie (IRA) et chargé de mission auprès de SOS-Esclaves.

1542. Selon les informations reçues, M. Biram Ould Dah Ould Abeid aurait été invité à participer au Festival du film et forum international sur les droits humains (FIFDH), organisé à Genève du 5 au 14 mars 2010, afin de présenter le documentaire « Chasseurs d'esclaves » consacré au travail mené par l'organisation SOS-Esclaves. Afin de se rendre en Suisse, M. Biram Ould Dah Ould Abeid, détenteur d'un passeport de service en sa qualité de conseiller auprès de la Commission nationale mauritanienne des droits de l'Homme, aurait fait une demande de renouvellement de passeport auprès de la Direction de la sûreté nationale. Or, le 6 février 2010, cette demande aurait été arbitrairement rejetée par ladite Direction.

1543. Il est allégué que ce refus ferait suite à la participation de M. Biram Ould Dah Ould Abeid à une conférence intitulée « L'esclavage en terre d'Islam : pourquoi les maîtres mauritaniens n'affranchissent pas leurs esclaves? », organisée au Centre d'accueil de la presse étrangère (CAPE) le 17 février 2009 à Paris, au cours de laquelle M. Biram Ould Dah Ould Abeid aurait dénoncé la persistance de l'esclavage alléguée et sa légitimation par l'application de la charia en Mauritanie. Par ailleurs, M. Biram Ould Dah Ould Abeid se serait vu reprocher par les autorités mauritaniennes d'avoir fourni des informations à Mme Gulnara Shahinian, Rapporteuse spéciale des Nations unies sur les formes contemporaines d'esclavage, lors de sa visite officielle dans le pays en octobre et novembre 2009.

1544. En outre, au cours du mois de novembre, le portail d'information elbidaya.net aurait publié un article anonyme contenant des propos diffamatoires à l'encontre de M. Biram Ould Dah Ould Abeid, article qui aurait été repris par plusieurs sites Internet mauritaniens. Enfin, durant cette même période, un inconnu aurait tenté de s'introduire à son domicile avant de prendre la fuite.

1545. Des craintes ont été exprimées quant au fait que le refus de renouveler le passeport de M. Biram Ould Dah Ould Abeid et le climat délétère dans lequel celui-ci travaille soient liés à ses activités de promotion et protection des droits de l'homme.

Réponse du Gouvernement

1546. Dans une lettre datée du 4 mai 2010, le Gouvernement a informé que M. Biram Ould Abeid a bénéficié d'une invitation personnelle au Festival du Film et Forum International sur les droits Humains prévu du 5 au 14 mars 2010 à Genève. A cette occasion, le Président de la Commission Nationale des Droits de l'Homme a, par lettre no. 675 du 2 février 2010, adressé une demande de prorogation du passeport de service no. M00197773 établi au nom de Biram Ould Dah Ould Abeid. Cette demande a été transmise au Ministère de l'Intérieur et de la Décentralisation par la Directrice Adjointe du Cabinet du Premier Ministre par lettre no. 012 du 3 février 2010.

1547. Les passeports de service sont réglementés, en Mauritanie, par le décret 62.160 en date du 12 juillet 1962 règlementant les titres de voyage qui dispose en son article 27 « les passeports de service sont accordés par le Ministère de l'Intérieur à la demande du Ministère des Affaires Etrangères. En Mauritanie, ils sont délivrés, renouvelés ou prorogés par le Ministère de l'Intérieur à la demande du Ministère des Affaires Etrangères. » L'article 30 du même décret précise : « en Mauritanie, la délivrance, le renouvellement ou la prorogation d'un passeport de service est subordonnée à la remise... d'une ampliation de l'ordre de mission de l'intéressé. »

1548. L'on rappelle que les ordres de mission pour les fonctionnaires de l'administration mauritanienne ne peuvent être établis que par le secrétaire général du Gouvernement.

1549. Par ailleurs, l'article 29 définit les personnes pouvant bénéficier d'un passeport de service. Il précise, en effet, que « peuvent obtenir un passeport de service pour leur déplacement à l'étranger, pendant la durée de leur mission :

1550. les fonctionnaires civils et militaires voyageant pour des raisons de services et possédant dans la hiérarchie administrative ou militaire un grade jugé suffisant par les ministères intéressés ;

1551. les personnes chargées par un département ministériel d'une mission importante revêtant un caractère national. »

1552. Dans le cas d'espèce, M. Biram Ould Abeid ne dispose que d'une invitation personnelle et ne pouvait sur cette base bénéficier d'un ordre de mission pris en charge par l'Etat quant aux frais de séjour et de voyage. C'est pour cette raison qu'il ne pouvait pas voyager avec un passeport de service alors qu'il n'est pas détenteur d'un ordre de mission établi par les autorités administratives compétentes. Le passeport de service demandé par M. Biram Ould Abeid est une facilité que le Gouvernement accorde aux fonctionnaires qu'il envoie en mission. Il ne pouvait pas bénéficier de cette commodité puisqu'il envisageait un voyage à titre privé.

1553. Sur un autre plan, nous rappelons, à cette occasion, que notre pays, la Mauritanie, a enregistré d'importants progrès en matière de protection et de promotion des droits de l'homme. Ces progrès ont été réalisés en application des principes de liberté et d'égalité édictés par l'Islam et garantis par la Constitution du 20 juillet 1991. Ces principes ont permis la reconnaissance de dizaines de partis politiques et de centaines d'associations de la société civile qui exercent leurs activités en toute quiétude et souvent avec l'appui des institutions de la République (telles que le Commissariat aux Droits de l'Homme, à l'Action Humanitaire et aux Relations avec la Société Civile et la Direction Générale des Elections et des Libertés Publiques). C'est, aussi, dans ce cadre qu'a été instituée, par l'ordonnance 2006.015 du 12 juillet 2006, la Commission Nationale des Droits de l'Homme afin de mener les investigations et entreprendre les actions nécessaires (auxquelles avait pris part M. Biram Ould Abeid en tant que Conseiller à cette institution) pour lutter contre toutes les formes de discrimination, notamment les séquelles de l'esclavage et autres traitements dégradants, dénoncés par les défenseurs des droits de l'homme.

1554. Il importe de préciser, par ailleurs, que M. Biram Ould Abeid s'active au nom de l'initiative pour la résurgence du mouvement anti-esclavagiste (IRA - Section Mauritanie), une association illégale en Mauritanie puisqu'elle n'a aucune existence juridique au regard de la loi mauritanienne, pas même le début du moindre dossier de reconnaissance auprès des autorités administratives. Malgré cela, M. Biram Ould Abeid a pu, jusqu'à présent, s'exprimer et voyager au nom de cette association sans être inquiété. Aussi, il nous semble exagéré qu'une institution aussi importante et fondamentale pour la promotion et la protection des droits humains de part le monde, que le Haut Commissariat des Nations Unies aux Droits de l'Homme puisse, se laisser entrainer dans la comédie de M. Biram Ould Abeid dont le seul but est de faire du sensationnel en jouant la victime de persécutions qui n'existent que dans son imagination. Pour notre part, nous n'admettons pas que la Mauritanie soit indexée pour des suppositions ou allégations sans fondement. La Mauritanie est un pays de droit qui garantit et respecte les droits à l'égalité et à la diversité pour l'ensemble de ses citoyens.

Appel urgent

1555. Le 27 avril 2010, la Rapporteuse spéciale, conjointement avec la Rapporteuse spéciale sur les formes contemporaines d'esclavage, y compris leurs causes et leurs conséquences et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé un appel urgent sur la situation de M. **Biram Ould Dah Ould Abeid**, Président de l'Initiative pour la Résurgence du Mouvement Abolitionniste en Mauritanie (IRA Mauritanie), une organisation qui lutte pour l'éradication de l'esclavage. M. Ould Dah Ould Abeid est également chargé de mission auprès de SOS-Esclaves.

1556. Selon les nouvelles informations reçues, le 1^{er} avril 2010, M. Ould Dah Ould Abeid aurait été démis de ses fonctions de conseiller de la Commission nationale des droits de l'homme par son Président, M. Ba Mariam Koita. Il est allégué que ce dernier lui aurait clairement signifié que cette décision était liée à ses activités relatives à la lutte contre l'esclavage et se serait adressé en lui dans les termes suivants : "Bien que tu sois non seulement un cadre compétent mais aussi un frère auquel je dois beaucoup, contre mes conseils tu n'as pas marché avec les autorités, ce qui t'empêche maintenant de travailler avec nous".

1557. Il est également allégué que le 15 avril 2010, M. Ould Dah Ould Abeid aurait été convoqué par le Directeur général des libertés publiques du Ministère de l'Intérieur, M. Mohamed Mahmoud Ould Mohamed Salah. Au cours de cet entretien, M. Ould Dah Ould Abeid se serait vu enjoint de cesser « toute déclaration ou activité de lutte contre l'esclavage » au risque de se voir arrêté et poursuivi pour activités illégales. M. Salah lui aurait également confirmé sa révocation du poste de conseiller de la Commission nationale des droits de l'homme.

1558. Des craintes ont été exprimées quant au fait que la révocation et la convocation de M. Ould Dah Ould Abeid susmentionnées ainsi que l'interdiction de mener des activités relatives à la lutte contre l'esclavage soient liées à ses activités non violentes de promotion et de protection des droits de l'homme, et ce dans l'exercice de son droit à la liberté d'opinion et d'expression.

Observations

1559. Le Rapporteur spécial remercie le Gouvernement de sa réponse, mais regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 27 avril 2010, 3 septembre 2008, 29 juillet 2008, 1^{er} juin 2007, 2 décembre 2004 et 5 décembre 2003. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à

répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits.

Mexico

Llamamiento urgente

1560. El 19 de abril de 2010, la Relatora Especial sobre la situación de los defensores de los derechos humanos, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, enviaron un llamamiento urgente señalando a la atención del Gobierno la información recibida en relación con la desaparición del Sr. **Ramón Ángeles Zalpa**, corresponsal del diario Cambio de Michoacán y originario de la comunidad indígena purépecha, el cual se encontraba desaparecido desde el día 6 de abril de 2010 después de haber informado sobre un ataque contra dicha comunidad indígena.

1561. Según las informaciones recibidas, el día 18 de marzo de 2010, el Sr. Zalpa habría publicado una información acerca de un ataque de un grupo armado contra una familia indígena purépecha. Dicha comunidad indígena estaría siendo objeto desde hace varios meses de abusos por parte de las autoridades locales debido a su intento de crear una radio comunitaria. Además, el Sr. Zalpa habría cubierto en sus investigaciones varios asuntos relacionados con el crimen organizado.

1562. La familia del Sr. Zalpa habría denunciado su desaparición el día 7 de abril ante el Ministerio Público de Paracho. La Procuraduría del Estado de Michoacán habría confirmado que habría iniciado un operativo de búsqueda de la persona del Sr. Zalpa aun sin resultados.

1563. Se expresó grave preocupación por la desaparición del Sr. Zalpa así como por su integridad física y psicológica. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de extrema vulnerabilidad para los periodistas y, de manera más general, para los defensores de los derechos humanos en México.

Carta de alegaciones

1564. El 22 de abril de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron una carta de alegaciones señalando a la atención del Gobierno la información recibida en relación con el **allanamiento y robo en las instalaciones de la revista Contralínea en el Distrito Federal de la capital mexicana**. Esta Revista habría llevado a cabo y publicado trabajos de investigación y denuncia sobre temas relacionados con la seguridad nacional, la corrupción gubernamental, narcotráfico, lavado de dinero, así como sobre diversos temas sociales.

1565. Según las informaciones recibidas, entre los días 10 y 11 de abril de 2010, varios individuos habrían forzado las puertas de acceso de las oficinas de las áreas editorial y administrativa de la revista Contralínea, habrían sustraído documentación contable y periodística, ordenadores así como teléfonos móviles. El allanamiento habría sido denunciado ante la Procuraduría General de Justicia del Distrito Federal, que le habría asignado el número de expediente FCH/CUH-6/T1/00542/10-04.

1566. Desde 2007, tanto la empresa Corporativo Internacional de Medios de Comunicación, S.A. de C.V. que edita, entre otras publicaciones, la revista Contralínea, como su Director, el Sr. Miguel Badillo, la periodista Ana Lilia Pérez y los trabajadores de la mencionada revista habrían sido objeto de diversas demandas judiciales por parte de los grupos empresariales Zeta Gas, Oceanografía y Blue Marine, contratistas de Petróleos

Mexicanos (PEMEX), las cuales podrían estar relacionadas con publicaciones de la revista sobre corrupción y adjudicación irregular de contratos por parte de algunas empresas.

1567. Con relación a estas demandas, la Comisión Nacional de los Derechos Humanos (CNDH) emitió la recomendación 57/2009 del 14 de septiembre de 2009 donde se advierte que los poderes federales Ejecutivo y Judicial violaron los derechos humanos de los periodistas de la publicación. La recomendación de la CNDH habría establecido que, en el caso del Sr. Badillo, de la Sra. Pérez y de los integrantes de la revista *Contralínea*, tanto la judicialización de la libertad de expresión como el veto publicitario se podrían considerar como formas de censura. Los periodistas de este medio de comunicación serían en la actualidad objeto de medidas cautelares dictadas por la CNDH y medidas precautorias dictadas por la Comisión de Derechos Humanos del Distrito Federal de la capital mexicana.

1568. Se expresó preocupación por el hecho de que este nuevo allanamiento y robo formasen parte de una serie de acosos que los periodistas de la revista *Contralínea* habrían sufrido desde 2007 debido a su trabajo de investigación y denuncia de casos de corrupción gubernamental. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente vulnerabilidad para los periodistas y defensores de los derechos humanos en México.

Llamamiento urgente

1569. El 4 de mayo de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron un llamamiento urgente señalando a la atención del Gobierno la información recibida en relación con la muerte y las lesiones por arma de fuego en contra de un grupo de defensores de derechos humanos, observadores internacionales y periodistas que formaban parte de una Misión de Observación de Derechos Humanos en el Estado de Oaxaca. Entre los integrantes de la Misión se encontrarían miembros del colectivo **Voces Oaxaqueñas Construyendo Autonomía y Libertad (VOCAL)**, de la **Alianza Mexicana por la Autodeterminación de los Pueblos (AMAP)**, profesores de la Sección 22 del **Sindicato Nacional de Trabajadores de la Educación**, integrantes de la **Asamblea Popular de los Pueblos de Oaxaca (APPO)**, integrantes del **Centro de Apoyo Comunitario Trabajando Unidos (CACTUS)**, de la **Red de Radios y Comunicadores Indígenas del Sureste Mexicano**, así como periodistas de la revista *Contralínea* y algunos otros periodistas nacionales y observadores internacionales de Alemania, Bélgica, Finlandia e Italia.

1570. Según las informaciones recibidas, el 27 de abril de 2010, los integrantes de dicha misión de observación habrían sido atacados cerca del municipio de San Juan Copala, en la región Triqui del Estado de Oaxaca, por un grupo de hombres armados presuntamente pertenecientes al grupo paramilitar "Unidad y Bienestar Social de la Región Triqui" (UBISORT). Como consecuencia de dicho ataque, habrían fallecido la Sra. **Beatriz Alberta Cariño Trujillo**, miembro de Centro de Apoyo Comunitario Trabajando Unidos (CACTUS), y del Sr. **Jyri Antero Jaakkola**, observador internacional de Finlandia. Asimismo, siete personas habrían resultado heridas por arma de fuego entre ellas, la Sra. **Mónica Citlali Santiago Ortiz**, estudiante de la Facultad de Derecho y Ciencias Sociales de la Universidad Autónoma Benito Juárez de Oaxaca.

1571. Además, como consecuencia de dicho ataque, durante los siguientes dos días, la Sra. **Noe Bautista Jiménez** y el Sr. **David Venegas Reyes**, integrantes de VOCAL, el Sr. **David Cilia García** y la Sra. **Ericka Ramírez Padilla**, periodistas de *Contralínea*, habrían permanecido escondidos en las cercanías del lugar de los hechos sin ser localizados por las autoridades hasta la tarde noche del día 29 de abril. Dos de ellos presentarían heridas por arma de fuego.

1572. Desde noviembre de 2009 hasta la fecha se habrían producido 18 asesinatos en la zona de los que serían presuntamente responsables grupos que se disputan el control del municipio autónomo de San Juan Copala.

1573. Para su información, el Sr. Venegas Reyes ha sido el objeto de un llamamiento urgente enviado por la entonces Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria y el Relator Especial sobre la tortura el 23 de abril de 2007.

1574. Se expresó grave preocupación por la muerte de la Sra. Beatriz Alberta Cariño Trujillo y del Sr. Yyri Antero Jaakkola, como consecuencia de las lesiones por arma de fuego sufridas por varios miembros de la Misión de Observación, así como por la integridad física y mental del resto de los integrantes de la mencionada misión, incluyendo defensores de los derechos humanos, observadores internacionales y periodistas.

Respuesta del Gobierno

1575. Mediante carta fechada el 10 de mayo de 2010, el Gobierno respondió al llamamiento urgente con fecha de 4 de mayo de 2010. Líneas de comunicación sobre los hechos ocurridos en San Juan Copala, Oaxaca, el 27 de abril de 2010.

1576. El Gobierno de México lamenta profundamente los hechos acaecidos en San Juan Copala, Juchitán, Oaxaca, el 27 de abril pasado, de los cuales resultó el fallecimiento de la ciudadana mexicana Beatriz Alberta Cariño y del ciudadano finlandés Jyri Jaakkola.

1577. La llamada "comunidad autónoma" de San Juan Copala, así denominada en el año 2007 por el Movimiento Unificador de Lucha Triqui Independiente (MULTI), es una zona en la que diversas organizaciones sociales se disputan el control político, lo que ha generado constantes enfrentamientos violentos.

1578. En efecto, en la zona triqui existe una disputa entre tres organizaciones: el ya citado Movimiento Unificador de Lucha Triqui Independiente (MULTI), el Movimiento Unificador de Lucha Triqui (MULT), y la Unidad de Bienestar Social de la Región Triqui (UBISORT).

1579. El 27 de abril de 2010, una denominada Caravana de observación por la paz - integrada por miembros de diversas organizaciones sociales y personas extranjeras de diversas nacionalidades, principalmente europeos, se dirigía a San Juan Copala cuando fue emboscada por gente armada. En efecto, según la información disponible, había una persona de nacionalidad alemana, dos finlandesas; una belga; una italiana y una francesa.

1580. Como resultado de la emboscada fallecieron las dos personas ya citadas y resultó herida la mexicana Mónica Citlalli Santiago Ortiz, mientras que otros miembros de la caravana escaparon del lugar.

1581. También se registraron noticias de diversas personas desaparecidas. Al día de hoy, únicamente registran ese carácter dos periodistas del semanario Contralínea (Erica Ramírez y David Cilia). No obstante, se tiene plena evidencia de que están vivos y a punto de ser rescatados por las autoridades, de manera que no hay personas desaparecidas.

1582. El Gobierno de México se compromete a dar puntual seguimiento a este caso y mantendrá informada a la opinión pública sobre el particular.

1583. En la emboscada resultó herida la mexicana Mónica Citlalli Santiago Ortiz, y fallecieron la connacional Beatriz Alberta Cariño y el ciudadano finlandés Jyri Jaakkola. El resto de los ciudadanos extranjeros que participaban en la caravana se encuentran a salvo y ya han entrado en contacto con sus respectivas embajadas.

1584. Es importante señalar que no se ha identificado la participación de agentes del estado, ni federal ni estatal en los hechos acontecidos.

1585. Acciones desarrolladas por el Gobierno mexicano:

1586. A raíz de los hechos, la Procuraduría General de Justicia del estado de Oaxaca inició el Legajo de Investigación 114/(SJ)/2010, dentro del cual se están realizando las investigaciones correspondientes para esclarecer los hechos. Las corporaciones policiales se mantienen en la zona y en coordinación con el Ministerio Público. Cabe destacar que todas las personas reportadas inicialmente como desaparecidas han sido localizadas.

1587. Por lo que respecta a la atención de las personas extranjeras involucradas, se creó un grupo de trabajo encabezado por la Secretaría de Relaciones Exteriores, con la participación de diferentes dependencias federales y representantes de las embajadas europeas para esclarecer el paradero de sus nacionales.

1588. Dicho grupo se trasladó de inmediato a Oaxaca el miércoles 28 de abril, donde reunió con el Secretario General de Gobierno, la Procuradora de Justicia y el Secretario de Seguridad Pública del estado de Oaxaca.

1589. La SRE crea grupo de trabajo con embajadas de la UE para identificar y localizar a sus ciudadanos involucrados en los hechos de San Juan Copala, Oaxaca.

1590. El Gobierno de México lamenta profundamente el fallecimiento de la ciudadana mexicana Beatriz Alberta Cariño y del ciudadano finlandés Jyri Jaakkola, acaecidos en los hechos ocurridos en San Juan Copala, Juxtlahuaca, Oaxaca, el 27 de abril pasado.

1591. Para dar respuesta a las inquietudes manifestadas por diversas embajadas europeas por la participación de algunos de sus connacionales en la Caravana de Derechos Humanos, la Secretaría de Relaciones Exteriores (SRE) decidió establecer un Grupo de Trabajo con la participación de diferentes dependencias federales y representantes de las embajadas europeas para esclarecer el paradero de los extranjeros. La invitación a sumarse a este grupo fue transmitida a la Unión Europea (UE) a través de la Embajada de España en México, que ostenta la presidencia temporal de la UE.

1592. La comisión plural se trasladó de inmediato a Oaxaca, donde el miércoles 28 de abril por la noche tuvo lugar una reunión de trabajo con el Secretario General de Gobierno, la Procuradora de Justicia y el Secretario de Seguridad Pública de esa entidad, en la que se revisó puntualmente la situación de cada uno de los ciudadanos europeos involucrados y se pudo comprobar que, salvo por el ciudadano finlandés, el resto de los europeos que participaban en la Caravana se encuentran sanos y salvos y ya han establecido contacto con sus respectivas embajadas.

1593. Por lo que hace al ciudadano finlandés fallecido, la Cancillería y el Gobierno del Estado de Oaxaca darán todas las facilidades para la recuperación y el traslado de sus restos.

1594. El Gobierno Federal reitera su pleno compromiso con la promoción y protección de los derechos humanos y con las personas, organizaciones e instituciones que trabajan legítimamente con ese propósito.

1595. El Gobierno de México, a través de la SRE, se compromete a dar puntual seguimiento a este caso y atender las demandas de información que el mismo amerite, en el ámbito de sus responsabilidades.

1596. El Gobierno incluyó en su respuesta un boletín informativo fechado el 11 de mayo de 2010 proporcionando información sobre un acuerdo de la Cámara de Diputados de establecer un grupo de trabajo para la región triqui de Oaxaca.

Llamamiento urgente

1597. El 28 de junio de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, y la Relatora Especial sobre la independencia de magistrados y abogados, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con los actos de hostigamiento y las amenazas, incluidas amenazas de muerte, recibidas por las Sras. **Blanca Mesina Nevarez** y **Silvia Vázquez Camacho**.

1598. La Sra. Blanca Mesina es hija de Miguel Ángel Mesina López, agente de la Secretaría de Seguridad Pública de Tijuana, quien fue arrestado y presuntamente torturado en marzo de 2009 en las instalaciones del Octavo Batallón Militar por agentes del grupo GOPE de Inteligencia Militar de Tijuana, Baja California. Sobre este caso, se envió una comunicación al Gobierno de su Excelencia el 28 de mayo de 2009.

1599. La Sra. Silvia Vázquez es abogada defensora de los derechos humanos y colabora con la Comisión Ciudadana de Derechos Humanos del Noroeste y con la Comisión Mexicana de Defensa y Promoción de los Derechos Humanos. Tanto Blanca Mesina como Silvia Vázquez trabajan en la denuncia y documentación de casos de tortura en la región.

1600. Según las informaciones recibidas, durante los últimos meses, las Sras. Blanca Mesina Nevarez y Silvia Vázquez Camacho habrían sido víctimas de actos de hostigamiento y amenazas, incluidas amenazas de muerte, presuntamente por su labor de defensa y acompañamiento de familiares y víctimas de tortura bajo arraigo en instalaciones militares de Tijuana, Baja California.

1601. Tanto Blanca Mesina como Silvia Vázquez habrían recibido llamadas telefónicas amenazantes, han sido objeto de seguimiento y vigilancia y habrían recibido amenazas de muerte contra ellas y contra sus familias. El último incidente habría tenido lugar el 18 de mayo de 2010 cuando Blanca Mesina habría sido seguida y posteriormente recibido amenazas de muerte por parte de un hombre encapuchado.

1602. Según las informaciones recibidas, como consecuencia de las amenazas recibidas, tanto la Blanca Mesina como Silvia Vázquez habrían recibido medidas de protección por parte de las autoridades federales mexicanas las cuales, sin embargo, habrían sido suspendidas recientemente sin ninguna explicación. Posteriormente, el 25 de mayo de 2010, las autoridades les habrían proporcionado un número de teléfono de seguridad al que podrían llamar durante las 24 horas en caso de emergencia. Sin embargo, dicho número correspondería a un servicio de coordinación que estaría disponible únicamente en horario de oficina y sin conexión con la policía regional.

1603. Según las últimas informaciones recibidas, el 4 de junio de 2010, antes las reiteradas amenazas, la Comisión Interamericana de Derechos Humanos habría otorgado medidas cautelares. En este sentido, La Comisión Interamericana habría solicitado al Gobierno adoptar las medidas necesarias para garantizar la vida y la integridad física de Blanca Mesina y Silvia Vázquez y sus familias.

1604. Se expresó grave preocupación por la integridad física y psicológica de las Sras. Blanca Mesina Nevarez y Silvia Vázquez Camacho y por el hecho de que las amenazas recibidas pudieran estar relacionadas con sus actividades de promoción y protección de los derechos humanos, en particular por su labor de defensa y acompañamiento de familiares y víctimas de tortura bajo arraigo en instalaciones militares de Tijuana. Se expresó asimismo preocupación por la presunta suspensión de las medidas de protección otorgadas por las autoridades mexicanas así como por la eficacia de las mismas. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en México.

Carta de alegaciones

1605. El 5 de agosto de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron una carta de alegación en relación con el secuestro de los señores **Jaime Canales**, camarógrafo del canal de televisión Multimedios; **Oscar Solís**, periodista del Diario Local El Vespertino; **Héctor Gordo** y **Alejandro Hernández**, ambos camarógrafos de la cadena Televisa.

1606. Según las informaciones recibidas, el lunes 26 de julio, los señores Jaime Canales, Oscar Solís, Héctor Gordo y Alejandro Hernández habrían sido secuestrados por un grupo de presuntos criminales en la Región de la Laguna, cerca de la Ciudad de Durango y el Estado de Coahuila.

1607. Según la información recibida, el periodista Oscar Solís habría sido secuestrado durante la noche del lunes 26 de julio, mientras las otras tres personas habrían desaparecido por la tarde del mismo día, luego de dar cobertura a una serie de protestas organizadas por los presos y sus familias en un centro de detención de la Ciudad de Gómez Palacio, en Durango.

1608. De acuerdo con la información recibida, el grupo que habría secuestrado a los periodistas habría exigido transmitir por los medios locales algunos videos que mostrarían entrevistas con dos hombres que habrían declarado trabajar para los Zetas, y otro hombre identificado como agente de la policía.

1609. De acuerdo con información reciente, la policía federal habría logrado la liberación de los cuatro periodistas el sábado 31 de julio mediante un operativo especial en el área de Durango.

Respuesta del Gobierno

1610. Mediante carta fechada el 15 de septiembre de 2010 el Gobierno respondió a la carta de alegaciones con fecha de 5 de agosto de 2010. De acuerdo a la información proporcionada por la Secretaría de Seguridad Pública Federal, el 26 de julio de 2010 los señores Alejandro Hernández Pacheco y Héctor Gordo Márquez, camarógrafo y reportero de la empresa Televisa; Javier Canales Fernández, camarógrafo de la empresa Multimedios Torreón; y, Oscar Solís, reportero del diario local "El Vespertino", fueron secuestrados en Gómez Palacios, Durango, mientras realizaban una cobertura en el penal ubicado de esa ciudad.

1611. El 29 de julio de 2010, el Ministerio Público Federal adscrito a la Subdelegación de Procedimientos Penales "B" de la Procuraduría General de la República (PGR) inició una averiguación previa AP/PGR/DGO/GP-II/159/2010 en Gómez Palacios, Durango, por el delito de secuestro.

1612. El 31 de julio de 2010, la Unidad Especializada en Investigación de Secuestros de la Subprocuraduría de Investigación Especializada en Delincuencia Organizada de la PGR, inicio una averiguación previa PGR/SIEDO/UEIS/344/2010, por el secuestro de los señores Alejandro Hernández Pacheco, Héctor Gordo Márquez y Javier Canales Fernández.

1613. Desde el momento en que se tuvo conocimiento del plagio, el Presidente de la República giró instrucciones a la Policía Federal para iniciar inmediatamente labores de investigación e inteligencia a través de un equipo de investigadores, analistas, asesores en manejo de crisis y del grupo de especial de operaciones, pues el objeto primordial de estas acciones era salvaguardar en todo momento la vida de las víctimas.

1614. La Secretaría de Seguridad Pública Federal asistió, desde el primer momento, con asesoría a los enlaces que estuvieron involucrados en el proceso de negociación con los

secuestradores. En este contexto, fue liberado por los mismos captores el reportero Héctor Gordo Márquez el 29 de julio de 2010, el señor Óscar Solís fue liberado al día siguiente.

1615. Luego de un intenso trabajo de inteligencia, y continuando con las líneas de investigación, el día 31 de julio de 2010 la Policía Federal realizó un operativo en el área donde se tenía conocimiento de la existencia de una casa de seguridad.

1616. Para privilegiar la vida de las víctimas, elementos de la Policía Federal realizaron un operativo que consideraba un cordón de seguridad en el perímetro y unidades de operación para la intervención.

1617. Al percatarse de la presencia de elementos de la Policía Federal en los alrededores de la casa de seguridad, los plagiarios huyeron, terminando así el cautiverio de los reporteros Javier Canales Fernández y Alejandro Hernández Pacheco.

1618. Las averiguaciones previas aún se encuentran en la etapa de análisis para emitir la determinación que conforme a derecho proceda.

Carta de alegaciones

1619. El 20 de agosto de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron una carta de alegaciones señalando a la atención del Gobierno la información recibida en relación con la situación en la que se encuentran el Padre **Martín Octavio García Ortiz** (conocido como Padre Martín), sacerdote católico que colabora con el Centro de Derechos Humanos Fray Bartolomé Carrasco en el municipio de San José del Progreso, Oaxaca, y el Padre **R. Francisco Wilfrido Mayrén Peláez**, mejor conocido como "Padre Uvi". El Padre Uvi es defensor de Derechos Humanos, fundador del Centro Regional de derechos humanos "Bartolomé Carrasco Briseño" AC. y coordinador de la Comisión Diocesana de Justicia y Paz.

1620. Según las informaciones recibidas, el Padre Martín Octavio García Ortiz vendría siendo víctima desde hace algún tiempo de hostigamiento por parte de autoridades municipales debido a su activismo medioambiental y sus esfuerzos por informar a la comunidad sobre el impacto social y ecológico de la mina de oro y plata San José, operada por la compañía Cuzcatlán S.A de C.V. y propiedad de la empresa canadiense Fortuna Mines, Inc.

1621. En mayo de 2009, coincidiendo con el auge de las movilizaciones de protesta contra la mina, habría dado comienzo una campaña de desprestigio contra el Padre Martín. En este contexto, varios diarios locales lo habrían acusado en diversas ocasiones de incitación a la violencia en el municipio de San José del Progreso. El 25 de noviembre de 2009, el Presidente Municipal de San José del Progreso habría presentado una denuncia contra el Padre Martín y le habría acusado públicamente de pertenecer al Ejército Popular Revolucionario (EPR), organización guerrillera activa en el sur del país desde 1996.

1622. Según los informes recibidos, el 16 de junio de 2010, se habría producido un enfrentamiento entre autoridades municipales de San José del Progreso y personas opositoras a la explotación de la mina, resultando muertos dos individuos: el Sr. Venancio Oscar Martínez Rivera, Presidente Municipal de San José del Progreso, y el Sr. Félix Misael Hernández, Regidor de Salud. En reacción a estos hechos, un grupo de personas habría retenido ese mismo día, durante varias horas, al Padre Martín, golpeándolo y amenazándolo con matarlo, hasta que decidieron entregarlo a la policía. Como consecuencia de las agresiones físicas que habría sufrido el Padre Martín durante su retención, éste habría tenido que ser trasladado al hospital donde habría permanecido hasta el día 30 de junio. Ninguna de las personas que participaron en la retención ilegal del señor García Ortiz habría sido detenida hasta la fecha.

1623. Posteriormente, la Procuraduría General de Justicia del estado de Oaxaca habría solicitado el arraigo del Padre Martín por considerarlo sospechoso de la autoría intelectual del homicidio del Sr. Venancio Oscar Martínez Rivera. Tras cumplir parte de su arraigo en el hospital para recuperarse de sus lesiones, el arraigo habría sido suspendido y el Padre Martín habría sido puesto en libertad el 30 de junio de 2010. Sin embargo, el proceso penal habría continuado su curso por lo que el Padre Martín continúa enfrentando una acusación penal, ahora en libertad.

1624. En este contexto, se ha recibido información de que en los últimos meses se han incrementado las notas periodísticas y actos de intimidación en contra del Padre R. Francisco Wilfrido Mayrén Peláez. El Padre Uvi habría apoyado y acompañado la defensa del Padre Martín desde el momento de ser privado de su libertad por parte de las autoridades oaxaqueñas. Asimismo, el Padre Uvi habría denunciado públicamente el asesinato en abril de 2010 de la defensora Beatriz “Betty” Cariño y de Jiry Jaakkola y habría intervenido como mediador en el caso a petición del Municipio de San Juan Copala. Durante los últimos meses, diversos medios locales habrían acusado al Padre Uvi de ser uno de los generadores de la violencia en el municipio.

1625. Se expresó grave preocupación por la integridad física y psicológica del Padre Martín Octavio García Ortiz y por las alegaciones de que su situación actual, incluyendo el proceso penal actualmente en curso, pudiera estar relacionada con sus actividades de promoción y protección de los derechos humanos, en particular su defensa del medioambiente y sus esfuerzos por informar a los afectados sobre el impacto social y ecológico de la mina de oro y plata San José. Asimismo, se expresó preocupación por la situación del Padre R. Francisco Wilfrido Mayrén Peláez y por las alegaciones de que los actos de desprestigio, acoso e intimidación que vendría sufriendo estarían relacionados con sus actividades como defensor de los derechos humanos y, en particular, con su apoyo al Padre Martín y con su labor de mediación en la situación del Municipio de San Juan de Copala.

1626. Las alegaciones arriba señaladas, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en México. En el Informe sobre la situación de las y los defensores en México, la OACNUDH señaló que el Estado de Oaxaca era el Estado con mayor número de quejas por agresiones en contra de defensores/as y advirtió el uso arbitrario del sistema penal como la segunda forma más habitual de obstaculización del trabajo de las y los defensores en México.

Carta de alegaciones

1627. El 1 de octubre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron una carta de alegaciones señalando a la atención del Gobierno la información recibida en relación con el ataque armado en el cual perdiera la vida el reportero gráfico **Luis Carlos Santiago**, de 21 años de edad, y resultara gravemente herido su compañero Carlos Manuel Sánchez Colunga, ambos colaboradores del Diario de Juárez, en Ciudad Juárez, Chihuahua.

1628. Según las informaciones recibidas, el 16 de septiembre 2010, un comando armado integrado por sujetos no identificados habría atacado con armas de fuego el vehículo en el que se trasladaban Luis Carlos Santiago y Carlos Manuel Sánchez Colunga, en las inmediaciones del centro comercial “Río Grande Mall”, ubicado en Ciudad Juárez, Chihuahua. Como resultado del ataque, perdió la vida en el lugar el Sr. Luis Carlos Santiago, y el Sr. Carlos Manuel Sánchez Colunga, con serias heridas de bala, fue trasladado a un centro asistencial en donde fue sometido a una intervención quirúrgica.

1629. Según se informa de que el vehículo en el que ambos viajaban, era propiedad del señor Gustavo de la Rosa y era utilizado comúnmente por su hijo Alejo de la Rosa, quien también colabora en el Diario de Juárez. El Señor de la Rosa, es visitador de la Comisión Estatal de los Derechos Humanos y se ha destacado por enfocarse a monitorear y denunciar violaciones de derechos humanos cometidas por el ejército en Ciudad Juárez, Chihuahua. Además, ha sido profesor de la Universidad de Ciudad Juárez, y es ampliamente reconocido por su labor de defensa de los derechos humanos en la comunidad. En el año 2009, habría solicitado públicamente la salida de las fuerzas armadas de Ciudad Juárez, por lo que posteriormente fue objeto de diversos actos de hostigamiento y amenazas en su contra, situación que lo habría obligado a trasladar su residencia a El Paso, Texas.

1630. Según se tiene conocimiento, el 17 de septiembre 2010, la Comisión Nacional de los Derechos Humanos emitió un comunicado (CGCP/236/10) condenando el ataque y solicitando el esclarecimiento de los hechos. Señaló que “con el homicidio de Luis Carlos Santiago se elevó a 65 el número de periodistas asesinados del año 2000 a la fecha”.

1631. Se temió que el atentado en el cual perdió la vida el reportero gráfico Luis Carlos Santiago, y resultara seriamente herido el Sr. Sánchez Colunga, esté relacionado con las actividades periodísticas que ellos realizan. Asimismo, se expresó una profunda preocupación por la vida, y por la integridad física y psicológica, tanto del Sr. Carlos Manuel Sánchez Colunga que sobrevivió al hecho, como del Sr. Gustavo de la Rosa y de su hijo Alejo de la Rosa, particularmente porque llevan a cabo su trabajo en un área considerada de riesgo para el ejercicio de la profesión periodística y de defensa de los derechos humanos.

1632. De ser confirmados los hechos, se enmarcan en un contexto de gran vulnerabilidad para los periodistas en México, por lo que quisiéramos recordar al Gobierno de su Excelencia que tiene la responsabilidad de garantizar la seguridad de los periodistas y comunicadores sociales y de tomar las medidas necesarias para asegurar que ninguna violación contra un periodista o comunicador social quede en la impunidad.

Llamamiento urgente

1633. El 16 de noviembre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con los actos de hostigamientos y las amenazas recibidas por el Sr. **Jorge Arzave Orihuela**. El Sr. Arzave Orihuela es miembro de la Asociación de Vecinos Propositivos por Lomas de San Francisco Tepojaco, agrupación que trabaja por el derecho a la vivienda y medio ambiente sano de las habitantes de Lomas de Cuautitlán. En este contexto, el Sr. Arzave Orihuela, con acompañamiento del Centro Prodh, ha interpuesto diversos recursos jurídicos con el objetivo de que se respeten los derechos a la información pública, a la vivienda y el acceso a la justicia de los habitantes de Lomas de Cuautitlán.

1634. Según las informaciones recibidas, desde agosto 2010, el Sr. Arzave Orihuela habría sido víctima de repetidos actos de hostigamientos y amenazas. Estas se han materializado en forma de llamadas amenazantes al teléfono de su domicilio y recientemente, el 8 de noviembre, en una visita de un vehículo no identificado en horas de la madrugada en la dirección de su domicilio.

1635. Según informes recibidos, el pasado 8 de noviembre 2010, un vehículo negro se habría estacionado durante unos minutos a altas horas de la madrugada frente al domicilio del Sr. Arzave Orihuela en Cuatitlán Izcallí. Dicho vehículo habría estado aparcado unos minutos frente a la casa del Sr. Sr. Arzave Orihuela con música a muy alto volumen de cuya letra se habría alcanzado a distinguir la frase “... del mérito de Michoacán”.

1636. Este hecho habría sido precedido por dos llamadas a su teléfono doméstico. La más reciente, con fecha 29 de octubre, la habría realizado un individuo que se habría identificado como integrante de “La Familia Michoacana”, un conocido grupo de crimen organizado que opera en el Estado de Michoacán. Esta persona habría indicado al Sr. Arzave Orihuela que una joven le habría entregado unas fotografías en las que aparecían él y su familia marcados con círculos. Según este individuo, dichas imágenes se las habrían proporcionado con el objetivo de que secuestrase al Sr. Arzave Orihuela.

1637. Anteriormente, el día 17 de agosto, el Sr. Arzave Orihuela habría recibido una llamada similar en la que se le habría indicado que se le estaba investigando desde hace 7 días por órdenes de alguien “que le quería hacer daño”. El mismo individuo le habría dado el nombre de su esposa y los datos de su domicilio para demostrarle que lo tenían vigilado. Según la información recibida, la llamada intimidatoria se habría producido en el contexto de la denuncia pública realizada el mismo día 17 de agosto por parte del Sr. Arzave Orihuela en un reportaje periodístico en medios de comunicación locales y nacionales. En dicho reportaje, el Sr. Arzave Orihuela habría denunciado que la alcaldesa del municipio de Cuautitlán Izcallí no habría llevado a cabo las gestiones necesarias para proveer a la población de un derecho digno a la vivienda y a la salud, y se habría referido al basurero de la zona, a las condiciones de salubridad del mismo y al riesgo de la acumulación de gases.

1638. De acuerdo con los informes recibidos, integrantes de la Agencia de Seguridad Estatal y de la policía municipal se habrían presentado en el domicilio del Sr. Arzave Orihuela para facilitarle sus números de celular, con la finalidad de que los llamara si fuera necesario. Se ha recibido información de que las patrullas de los elementos de seguridad estatal y municipal se habrían presentado esporádicamente en casa del Sr. Arzave Orihuela, lo cual no sería suficiente para garantizar su seguridad.

1639. Según la información recibida, el señor Arzave Orihuela habría interpuesto denuncias y solicitado medidas cautelares. Sin embargo, se alega que las autoridades competentes no habrían avanzado en las investigaciones de estas amenazas, ni en las medidas para garantizar de manera efectiva su seguridad y la de su familia.

1640. Se expresó preocupación por la integridad física y psicológica del Sr. Arzave Orihuela y también por el hecho que estos actos de hostigamiento y amenazas pudieran estar relacionados con sus actividades de promoción y protección de los derechos humanos, en particular en favor del derecho a la vivienda y medio ambiente sano de los habitantes de Lomas de Cuautitlán. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en México.

Llamamiento urgente

1641. El 3 de diciembre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención del Gobierno la información recibida en relación con la agresión sufrida por la Sra. **Margarita Guadalupe Martínez**, integrante de la Organización Enlace, Comunicación y Capacitación, A.C (Enlace CC), así como las nuevas amenazas de muerte en su contra y también contra los integrantes del equipo del Centro de Derechos Humanos Fray Bartolomé de las Casas, conocido como Centro Frayba. Los hechos referidos tuvieron lugar en la ciudad de San Cristóbal de las Casas, en el Estado de Chiapas. La Organización ENLACE tiene sede social en el municipio de Comitán (Chiapas) y tiene por objetivo la construcción de alternativas de desarrollo local sostenible en territorios suburbanos, indígenas y campesinos del sur de México.

1642. Según las informaciones recibidas, el 24 de noviembre de 2010, la Sra. Margarita Guadalupe Martínez habría sido interceptada y amenazada de muerte. Estos hechos habrían

tenido lugar cuando la Sra. Martínez salía de una cafetería después de haber sostenido una entrevista con un funcionario de la Oficina en México del Alto Comisionado de las Naciones Unidas, en la mencionada ciudad de San Cristóbal de las Casas. La reunión habría tenido por objeto dar seguimiento a anteriores incidentes de amenazas y agresiones con la Sra. Martínez.

1643. Estos actos de los que habría sido objeto la Sra. Martínez habrían originado el 3 de marzo de 2010 el otorgamiento de medidas cautelares por parte de la Comisión Interamericana de Derechos Humanos y habrían sido incluidos en Actualización 2010: Informe sobre la situación de las y los defensores de derechos humanos en México el cual habría sido presentado Oficina en México del Alto Comisionado de las Naciones Unidas el día 24 de noviembre de 2010. La Sra. Martínez recibe actualmente protección, la cual incluye escolta policial.

1644. Según la información recibida, al salir de la cafetería, la Sra. Margarita Guadalupe Martínez habría buscado a la persona que tiene asignada como escolta pero no la habría encontrado. Habría caminado una cuadra cuando habría sido interceptada por dos personas, un hombre a bordo de una camioneta blanca sin placas de circulación, y otro individuo a pie. El último le habría indicado, amenazándola de muerte si no cumplía las órdenes, que caminará dos cuadras hasta que se encontrara con una persona que le daría indicaciones. Una vez realizado el recorrido, la Sra. Martínez habría recibido un papel con amenazas contra los integrantes del Centro Frayba. Los individuos le habrían exigido que transmitiera las amenazas y le habrían indicado que debería caminar dos cuadras más para tomar un taxi. Según los informes recibidos, durante todo este tiempo, la Sra. Martínez habría sido seguida de cerca por la camioneta blanca.

1645. Se ha recibido información indicando que el antecedente más reciente a los incidentes mencionados habría tenido lugar el 26 de febrero de 2010, cuando la Sra. Martínez habría sido secuestrada y amenazada de muerte cuando se dirigía a buscar a su hijo a la escuela. En esa ocasión personas no identificadas le habrían colocado una bolsa de plástico en la cabeza y la habrían obligado a entrar en un vehículo, en el cual habría sido golpeada en el rostro y agredida mediante punzadas en los costados con un objeto que pudo ser un arma corto-punzante o un arma de fuego. En esta ocasión, sus agresores la habrían amenazado de muerte, diciéndole “ya no vas a poder trabajar”, y la habrían instando a que desistiera de la denuncia penal iniciada el 23 de noviembre de 2009 en contra de funcionarios del Gobierno de Chiapas por los delitos de abuso de autoridad, allanamiento, tortura psicológica y amenazas con el agravante de muerte. Sus agresores también le habrían indicado que la agresión contra ella se trataba “de un regalito del presidente municipal de Comitán”. Posteriormente, la habrían bajado del vehículo.

1646. Se expresó grave preocupación por la integridad física y psicológica de la Sra. Martínez y por las alegaciones de que estos hechos pudieran estar relacionados con sus actividades de promoción y protección de los derechos humanos. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en México.

Llamamiento urgente

1647. El 28 de diciembre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, y la Relatora Especial sobre la violencia contra la mujer, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con el asesinato de la Sra. **Marisela Escobedo Ortiz**, defensora de los derechos de las mujeres de Ciudad Juárez, Estado de Chihuahua. La Sra. Escobedo Ortiz habría llevado a cabo desde hace meses movilizaciones de distinto tipo para obtener justicia por el asesinato de su hija.

1648. Según las informaciones recibidas, desde el día 8 de diciembre de 2010, la Sra. Escobedo Ortiz se manifestaba pacíficamente frente al Palacio de Gobierno de Estado de Chihuahua como protesta y exigiendo justicia por la muerte de su hija, Rubí Marisol Frayre Escobedo, la cual habría sido asesinada a los 16 años de edad en Ciudad Juárez por su pareja sentimental, el Sr. Sergio Rafael Barraza.

1649. Según los informes recibidos, el 16 de diciembre de 2010, un grupo de hombres habría llegado a la plaza principal de la ciudad de Chihuahua y se habría acercado a la Sra. Escobedo Ortiz. Ella habría corrido buscando refugio en el Palacio de Gobierno y, a sus puertas, uno de los hombres le habría disparado en la cabeza causándole la muerte. Según se informa, las cámaras de seguridad del área habrían grabado este homicidio. Días antes de este suceso, la Sra. Escobedo Ortiz habría recibido amenazas, por parte de la pareja sentimental de su hija y de la familia de ésta, conminándola a desistir de su reclamo de justicia.

1650. El 28 de agosto de 2008, tras el asesinato de su hija Rubí, la Sra. Escobedo Ortiz habría exigido justicia de manera pacífica y utilizado sus propios recursos para investigar los hechos y dar con el asesino de su hija. También habría comenzado los trámites correspondientes a la denuncia de la pareja sentimental de su hija Sergio Rafael Barraza, quien según las informaciones recibidas, habría ejercido violencia contra Rubí desde el inicio de la relación.

1651. El Sr. Barraza, personalmente y ante la Sra. Escobedo Ortiz, habría ubicado el lugar exacto donde había depositado a su víctima, confesado su crimen y pedido perdón en la audiencia de juicio oral que se realizó. Sin embargo, el 29 de abril de 2010 fue absuelto.

1652. Tras la absolución de Sergio Rafael Barraza, se habría realizado un juicio de casación y logrado que en dicha sentencia se condenara al asesino. Sin embargo, como no se dictó arraigo él habría vuelto a huir y desde su fuga comenzado a amenazar a la señora Escobedo Ortiz. De acuerdo a la información recibida, en una entrevista realizada un día antes de su asesinato, la Sra. Escobedo habría reiterado que recibía amenazas del Sr. Barraza y de su familia, indicando que éste formaba parte de un grupo del crimen organizado y que las pruebas correspondientes estaban ya en manos de las autoridades.

1653. Se expresó grave preocupación por el asesinato de la Sra. Marisela Escobedo Ortiz y por las alegaciones de que este hecho pudiera estar relacionado con su movilización para aprehender al asesino de su hija. Asimismo, se expresó preocupación por la integridad física y mental de los miembros de la familia de la Sra. Marisela Escobedo Ortiz. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en México, en especial para las mujeres en Ciudad Juárez.

Llamamiento urgente

1654. El 14 de febrero de 2011, el Relator Especial, junto con el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental, la Relatora Especial sobre la situación de los defensores de los derechos humanos, y el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la detención del señor **José Ricardo Maldonado Arroyo**, Director de la Red de Personas Afectadas por VIH (REPAVIH) con sede en Mérida, Yucatán, y activista de los derechos del colectivo de gays, lesbianas, bisexuales y personas transgénero (LGBT). REPAVIH es una organización que desde 2006 ofrece asesoramiento médico y apoyo emocional a las personas afectadas por el virus VIH en Yucatán y lleva a cabo campañas de sensibilización y contra la discriminación.

1655. Según las informaciones recibidas, el 4 de diciembre de 2010, el Sr. José Ricardo Maldonado Arroyo habría sido detenido de manera arbitraria por elementos de la policía judicial del Estado de Yucatán. Los agentes habrían alegado que el motivo de su arresto era la presunta investigación de un delito y, sin mostrarle una orden de detención, le habrían esposado, vendado los ojos e introducido y transportado en un vehículo no oficial donde le habrían insultado y se habrían dirigido a él con expresiones homófobas.

1656. Según las informaciones recibidas, los agentes habrían golpeado al Sr. Maldonado Arroyo en repetidas ocasiones en la cara, el pecho y la espalda mientras le preguntaban acerca de su trabajo de defensa de los derechos de las personas que viven con el VIH y del colectivo de gays, lesbianas, bisexuales y personas transgénero. El Sr. Maldonado Arroyo habría permanecido cerca de cuatro horas retenido con el rostro cubierto con su propia playera tiempo durante el cual habría sido obligado a cambiar varias veces de vehículo. Posteriormente, habría sido puesto en libertad bajo la amenaza de volver a ser agredido si presentaba alguna queja por los hechos ocurridos.

1657. La identidad de uno de los agentes a cargo de la detención del Sr. Maldonado Arroyo, el cual vestían cazadora negra con la leyenda "PGJ", ha sido puesta en conocimiento de nosotros.

1658. Según se informa, el 5 de diciembre de 2010, el Sr. Maldonado Arroyo habría presentado una denuncia ante la Procuraduría General de Justicia en el Estado así como una queja ante la Comisión de Derechos Humanos del Estado de Yucatán (CODHEY). En primera instancia se habría abierto un expediente por el delito de "lesiones" pero descartando el abuso de autoridad o tortura. Por su parte, la CODHEY habría también realizado su propia investigación, incluyendo fotografías sobre las lesiones, certificados médicos y testimonios. A pesar de la solicitud por parte del Sr. Maldonado Arroyo de medidas cautelares a su favor, se informa que éstas habrían sido denegadas de forma verbal.

1659. Se expresó preocupación por la integridad física y psicológica del Sr. Maldonado Arroyo y por las alegaciones de que su detención fue arbitraria y de que sufrió amenazas y agresiones por parte de las fuerzas del orden. Asimismo, se expresa preocupación por la información recibida indicando que estos hechos pudieran estar relacionados con sus actividades de promoción y protección de los derechos humanos, en particular a favor de los derechos de las personas que viven con VIH y de los derechos del colectivo de gays, lesbianas, bisexuales y personas transgénero. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en México.

Respuestas del Gobierno a comunicaciones enviadas con anterioridad

1660. Mediante carta fechada el 2 de marzo de 2011, el Gobierno respondió a la carta de alegaciones con fecha 15 de mayo de 2009 relacionado con el caso del Sr. **Carlos Ortega Melo Samper**.

1661. De acuerdo con la información proporcionada por la Procuraduría General de Justicia del estado de Durango, a las 16:30 horas del 3 de mayo de 2009, fue encontrado el cuerpo sin vida del periodista Carlos Ortega Melo Samper en el interior de un automóvil sin placas de circulación, entre las calles Club de Leones y Domingo Arrieta, en el municipio de El Oro, en el Estado de Durango. El cuerpo presentó tres heridas en la región del cráneo producidas por proyectil de arma de fuego. En el interior del automóvil fue hallada una escopeta, tres cartuchos útiles y tres casquillos reперcutidos.

1662. La Comisión Nacional de los Derechos Humanos registró en el mes de mayo de 2009 el expediente de queja 2009/2038, la cual fue asignada a la Quinta Visitaduría General a cargo del Programa de Agravios a Periodistas y Defensores Civiles de Derechos Humanos.

1663. La Comisión Estatal de Derechos Humanos del Estado de Durango informó haber iniciado también un expediente de queja relacionada con el homicidio del periodista Carlos Ortega Melo Samper.

1664. Ambas quejas se encuentran en fase de integración.

1665. El 3 de mayo de 2009, la Procuraduría General de Justicia del Estado de Durango dio inicio a la averiguación previa 075/2009, en contra de quien o quienes resulten responsables por el homicidio del periodista Carlos Ortega Melo Samper.

1666. Del resultado de las investigaciones se desprendieron dos líneas de investigación:

- Como consecuencia de las publicaciones que realizó el periodista Carlos Ortega Melo Samper en el diario local El tiempo de Durango en las que denunció casos de corrupción de funcionarios del gobierno del Estado de Durango.
- Tres causas penales instruidas en su contra (proceso penal 01/89 por el delito de violación en agravio de un menor de edad, en la que fue sentenciado a la pena de 7 años de prisión y al pago de una multa de 30 salarios mínimos; proceso penal 29/05 por el delito de venta de bebidas con contenido alcohólico; y, proceso penal 41/94, por el delito de injurias).

1667. No obstante lo anterior, el Ministerio Público acordó la incompetencia para seguir conociendo de las investigaciones remitiéndolas a la Fiscalía Especializada en delitos cometidos contra periodistas de la Procuraduría General de la República, institución encargada de la investigación y persecución de las conductas probablemente delictivas, cometidas en contra de periodistas, que tengan como propósito impedir el libre ejercicio de su actividad profesional.

1668. La Fiscalía Especializada en delitos cometidos contra periodistas de la Procuraduría General de la República, se coordinó con la Delegación de la Procuraduría General de la República en el Estado de Durango para dar seguimiento a la investigación que dio inicio la Procuraduría General de Justicia del Estado de Durango.

1669. Dentro de la averiguación previa se han desahogado las siguientes diligencias:

- Inspección ocular del lugar de los hechos,
- Levantamiento del cuerpo,
- Informe de investigación rendido por la Policía Ministerial,
- Certificación de la causa de muerte,
- Recolección de objetos hallados en el lugar de los hechos,
- Aseguramiento del vehículo en el que viajaba la víctima, el cual fue remitido a la agencia del Ministerio Público de Durango Oaxaca para realizar los dictámenes periciales correspondientes.

1670. La averiguación previa aún se encuentra en etapa de integración.

1671. Mediante carta fechada el 13 de septiembre de 2010, el Gobierno respondió a la carta de alegaciones con fecha 18 de diciembre de 2009 relacionado con los asesinatos de los Sres. **José Galindo Robles, José Bladimir Antuna García y Mariano Abarca Roblero.**

1672. El señor **Mariano Abarca Roblero** era miembro de la Red Mexicana de Afectados por la Minería (REMA-Chiapas) cuyo propósito es frenar y eliminar la minería a cielo abierto por considerarla no sustentable. Específicamente, era opositor a la explotación de minas de barita por la empresa Canadiense *Black Fire Exploration Mexico* en la sierra de Chiapas.

1673. El 27 de noviembre de 2009, el señor Abarca Roblero fue asesinado frente a su casa cuando un sujeto en motocicleta se le acercó y le disparó. En la agresión quedó herido Orlando Velásquez, también integrante de la REMA-Chiapas.

1674. La Procuraduría General de Justicia de Chiapas (PGJ Chis) inició una averiguación previa en contra de quienes resulten responsables.

1675. De acuerdo a familiares de la víctima y a REMA-Chiapas, los directivos de la empresa canadiense habían amenazado de muerte al señor Abarca Robledo, por lo que la PGJ Chis llamó a declarar a dos directivos de la minera para deslindar responsabilidades en el asesinato.

1676. Además, se están implementando medidas de protección en favor de los familiares de Mariano Abarca Roblero.

1677. A principios de 2010, se ejerció acción penal en contra de los señores Caralampio López Vázquez, Jorge Carlos Sepúlveda Calvo y Ricardo Antonio Coutiño Velasco, como autores materiales de los delitos de homicidio calificado y homicidio en grado de tentativa.

1678. Asimismo, se ejerció acción penal en contra de Walter Antonio León Montoya por ser el presunto autor intelectual de los delitos anteriormente mencionados. Actualmente, el procedimiento penal se encuentra en periodo de instrucción.

1679. El señor **José Emilio Galindo Robles**, se desempeñó como director de Radio Universidad de Guadalajara de Ciudad Guzmán, su cadáver fue hallado en su domicilio el 24 de noviembre de 2009. Su labor era conocida por defender el medio ambiente y los derechos humanos.

1680. De acuerdo a las primeras investigaciones de la Procuraduría General de Justicia del estado de Jalisco, el comunicador fue victimado y continúan los trabajos para determinar con exactitud las causas de su muerte y el móvil.

1681. El señor **José Bladimir Antuna García**, se desempeñó como reportero del periódico *El Tiempo*, fue encontrado muerto la noche del 2 de noviembre de 2009 a poco menos de 12 horas de haber sido aparentemente secuestrado por un grupo armado en el estado de Durango.

1682. Las investigaciones para poder dar con el presunto o presuntos responsables, en un primer momento corrieron a cargo de la Procuraduría General de Justicia del estado de Durango, posteriormente la Procuraduría General de la República ejerció la facultad de atracción.

1683. La Comisión Nacional de los Derechos Humanos abrió un expediente de queja para dar seguimiento a las investigaciones ministeriales relacionadas con el homicidio del reportero. Además, solicitó medidas cautelares para garantizar la seguridad e integridad física de la familia del comunicador, así como de comunicadores y directivos de ese diario.

Observaciones

1684. El Relator Especial agradece al Gobierno las respuestas recibidas. Sin embargo, lamenta que, en el momento de finalizar este informe, no se había recibido respuesta a 19 comunicaciones enviadas. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato es por ello que insta al Gobierno a que le proporcione una respuesta acerca de los casos mencionados.

1685. Asimismo, el Relator Especial agradece al Gobierno su invitación a visitar el país del 9 al 24 de agosto de 2010, junto con la Relatora Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, y destaca su apertura al haberles

facilitado todas las condiciones para la realización de su visita, la primera que se realiza de manera conjunta a un país de la región.⁶⁹ Las conclusiones y recomendaciones finales se pueden encontrar en el informe A/HRC/17/27/Add. 3.

En un comunicado de prensa de fecha 12 de mayo de 2010, el Relator Especial, junto con el Relator Especial sobre las ejecuciones sumarias, extrajudiciales o arbitrarias y la Relatora Especial sobre la situación de los defensores de derechos humanos, advirtieron sobre el deterioro de la situación para los defensores de los derechos humanos en México y condenaron firmemente los asesinatos de Bety Cariño y Tyri Antero Jaakkola, en Oaxaca.⁷⁰

Morocco

Appel urgent

1686. Le 12 novembre 2010, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, a envoyé un appel urgent concernant la situation **d'un groupe de personnes sahraouies, notamment sur le décès d'Al-Najem al-Karhi, un garçon âgé de 14 ans.**

1687. Selon les informations recues, le 24 octobre 2010, plusieurs personnes sahraouies, dont Al-Najem al-Karhi, se rendaient en convoi de deux voitures au camp Gdeim Izik dans le désert à la périphérie de Laayoune quand l'armée aurait ouvert le feu sur un des deux véhicules à un point de contrôle aux abords du camp. Al-Najem al-Karhi aurait été tué et plusieurs personnes auraient été blessées.

1688. Selon les informations reçues, les autorités marocaines auraient indiqué que parmi les passagers se trouvait une personne recherchée par les forces de sécurité et que celles-ci avaient ouvert le feu sur le véhicule dans lequel se trouvait Al-Najem al-Karhi en réponse à des coups de feu tirés en direction du point de contrôle, mais depuis l'autre véhicule. Selon les membres de la famille d'Al-Najem, les passagers des deux véhicules se rendaient au camp afin d'apporter des vivres à des proches présents dans le camp et pour exprimer leur soutien aux manifestants.

1689. Le 25 octobre 2010, Al-Najem aurait été enterré. Selon ses proches, sa mère, ses frères et sœurs n'auraient pas été autorisés à voir son corps et n'auraient pas été informés du lieu de l'enterrement. Le procureur de la Cour d'appel de Laayoune aurait ordonné l'ouverture d'une enquête en relation avec les faits susmentionnés.

1690. Le camp Gdeim Izik aurait été monté par des milliers de manifestants sahraouis qui demanderaient qu'il soit mis fin à leur marginalisation socio-économique par le Gouvernement marocain. Les organisateurs auraient déclaré que cette manifestation n'est pas de nature politique et ils auraient demandé aux participants de ne faire aucune intervention politique. Depuis son installation le 10 octobre 2010, l'armée marocaine aurait maintenu des effectifs importants autour du camp. Par ailleurs, l'accès au camp serait interdit à ceux qui veulent apporter des vivres aux manifestants, ainsi qu'aux journalistes et aux activistes nationaux et étrangers qui veulent exprimer leur solidarité.

⁶⁹ Relatorías para la libertad de expresión de la ONU y la OEA concluyen visita a Mexico, 24 de agosto de 2010:

<http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10297&LangID=S>

⁷⁰ Comunicado de prensa, 12 de mayo de 2010:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10041&LangID=E>

1691. Des craintes ont été exprimées quant à des informations reçues indiquant une escalade de la violence, comme en témoigne l'assaut du camp par les forces de sécurité le 8 novembre 2010 qui aurait fait des morts et des blessés des deux côtés.

Réponse du Gouvernement

1692. Dans une lettre en date du 1er février 2011, le Gouvernement a indiqué que dans la nuit du 22 au 23 octobre 2010, un groupe de jeunes de l'ex-campement « Gdem izig » ont procédé à l'expulsion hors dudit camp, du dénommé Ahmed Daoudi alias « Djija », qui était dans un état d'ébriété avancé, semait la terreur parmi les campeurs.

1693. Le 24 octobre 2010 vers 17h30, le susnommé accompagné par six personnes dont le mineur Najem El Guareh munis de sabres, de coutelas et de cocktails Molotov, à bord de deux véhicules de marque 4x4, ont tenté d'accéder à l'ex campement, avant de rebrousser chemin après avoir été pourchassés par des éléments chargés de la sécurité dudit campement.

1694. Dans la même journée et dans le cadre de sa mission de contrôle routinier, le poste de contrôle relevant de la gendarmerie royale a été surpris par les deux véhicules assaillants dont les occupants ont refusé d'obtempérer aux signaux réglementaires de contrôle et qui ont tenté de forcer ledit poste de contrôle.

1695. Les occupants du premier véhicule ont réussi à prendre la fuite en direction de la ville d'Es-Smara après avoir tiré 3 (trois) coups de feu en direction des éléments de la gendarmerie royale, qui se sentant menacés, ont riposté par des tirs et ont réussi à neutraliser le second véhicule, dont les occupants, qui étaient en état d'ivresse, ont brandi un sabre et des machettes contre les éléments des forces de l'ordre.

1696. Cet incident a fait six blessés qui furent évacués vers l'hôpital Hassan Bel Mehdi, puis sur l'hôpital militaire de ce centre, Au moment de leur évacuation, le dénommé de son vivant Najem El Guareh a succombé à ses blessures.

1697. Suite à cet incident le Procureur Général près de la Cour d'appel de Laâyoune a ordonné l'ouverture d'une enquête qui a révélé que les mis en cause sont des récidivistes, ayant même fait l'objet d'une dénonciation par les organisateurs de l'ex-campement « Gdim izik » comme étant dangereux, il s'agit des dénommés :

- Ahmed Eddaoudi, alias « Djija », repris de justice condamné à plusieurs reprises de 1993 à 2009, pour ivresse, vol qualifié, viol, prostitution, escroquerie, trafic de comprimés psychotropes et coups et blessures ;
- Zoubir Gharah, repris de justice condamné à plusieurs reprises pour ivresse, vol, trafic de stupéfiants et de comprimés psychotropes, outrage à un fonctionnaire et coups et blessures ;
- Sidi Mohamed Laghdaf Alaoui, repris de justice condamné à plusieurs reprises pour détention et consommation de chira, ivresse et consommation de drogue ;
- Ahmed Hmimid ;
- Salek Alaoui ;
- Said Assabbane, repris de justice ;
- Leg Yahdih ; et
- Rachid Ennajrnaoui.

1698. Les mis en cause, dont le procès est en phase d'instruction, ont été placés sous mandat de dépôt à la prison civile de Laâyoune. Quant aux prévenus Andour Mohamed et Barikallah El Bakkay, ils sont poursuivis en état de liberté conditionnelle.

1699. Concernant les allégations selon lesquelles la famille de Najem El Guareh n'aurait pas été autorisée à voir son corps et n'aurait pas été informée du lieu de son enterrement, elles sont dénuées de tout fondement car l'enterrement du défunt a eu lieu suite à la demande d'autorisation du père du défunt M. Mohamed Fadel El Guareh, adressée au procureur général du Roi près la cour d'appel de Laâyoune, en présence des membres de sa famille ainsi que des notables et chioukhs issus de sa tribu, selon la coutume en vigueur dans la région.

1700. S'agissant des allégations colportées par les mis en cause qui prétendaient se rendre au campement pour apporter des vivres à des proches présents au campement et pour exprimer leur soutien aux manifestants, elles sont sans fondement car le lieu des incidents est situé au-delà du campement d'environ une dizaine de km et la fouille opérée par les éléments de la gendarmerie royale sur le véhicule immobilisé a permis la saisie de : 27 cocktails Molotov ; 1 sabre samouraï ; 3 machettes ; 2 gourdins ; 3 barres de fer ; 1 bidon d'essence de 10 litres; une quantité de pierres destinée aux jets contre les forces de l'ordre ; 1 butane à gaz ; et 85 comprimés psychotropes.

Lettre d'allégation

1701. Le 3 février 2011, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et la Rapporteuse spéciale sur le logement convenable en tant qu'élément du droit à un niveau de vie suffisant ainsi que sur le droit à la non-discrimination à cet égard, a envoyé une lettre d'allégation concernant les **incidents relatifs au démantèlement du camp Gdeim Izik situé dans le désert à quelques kilomètres d'El-Ayoune, au Sahara occidental, survenus en novembre 2010.**

1702. Selon les informations reçues, des forces de sécurité marocaines seraient entrées dans le camp Gdeim Izik situé au Sahara occidental où quelques milliers de tentes ont été dressées en octobre par des personnes sahraouies afin de protester contre leurs conditions sociales et économiques, en vue de les démanteler. Le 8 novembre 2010, les forces de sécurité marocaines auraient démantelé le camp et fait partir les manifestants. L'opération de démantèlement aurait conduit à un affrontement violent entre les résidents du camp et les forces de sécurité. La violence se serait propagée à la ville d'El-Ayoune et aurait entraîné la mort de 11 membres des forces de l'ordre et de 2 civils.

1703. Quelque 300 personnes auraient été détenues. Des rapports portés à notre attention ont indiqué que des personnes sahraouies auraient fait l'objet d'actes de torture et de mauvais traitements aux mains des forces de sécurité marocaines lors du démantèlement du camp, durant leur arrestation et leur détention.

1704. Lors de l'opération de démantèlement, des personnes sahraouies, y compris des personnes âgées et des femmes, auraient été battues et subies d'autres mauvais traitements. Pendant leur arrestation et leur transport dans des véhicules de police aux centres de détention, des détenus auraient été menottés pendant plusieurs heures et roués de coups de pied faisant ainsi des blessés.

1705. Au cours de leur détention et interrogatoire par des agents de sécurité, des détenus auraient été menacés de violences physiques, sexuelles et psychologiques et auraient subi des actes de torture. Des allégations de viol et de menaces de viol avec une bouteille ou une matraque ont également été étayées. Selon les informations reçues, les personnes détenues auraient subi des coups, parfois entraînant une perte de connaissance, et de l'urine ainsi que des excréments auraient été jetés sur eux. Certaines personnes détenues auraient également été privées de nourriture et d'eau pendant 36 heures.

1706. En outre, les familles des personnes détenues ont déploré le fait que les autorités marocaines ne les aient pas informées du moment et du lieu d'arrestation des membres de leur famille détenus et qu'un droit de visite leur ait été refusé pendant plus de 2 semaines.

1707. A El-Ayoun, suite au démantèlement du camp, des Sahraouis sont sortis dans les rues et commis des actes de violence, y compris contre des bâtiments publics liés à l'administration marocaine. Les informations reçues indiquent que les forces de sécurité ont tiré par balle dans la ville d'El-Ayoun, blessant des civils. Des civils marocains auraient également été impliqués dans des attaques de représailles sur la propriété et les maisons de personnes sahraouies. En outre, les forces de sécurité marocaines ne seraient pas intervenues pour protéger les sahraouis ou auraient elles-mêmes participé aux attaques. Par exemple, dans le quartier de Colomina Nueva, des maisons appartenant à des personnes sahraouies auraient été attaquées les 8 et 9 novembre et les habitants auraient été roués de coups et fait l'objet de menaces et d'intimidation. Leurs biens et effets personnels auraient été saccagés ou volés.

1708. Au moins 130 personnes auraient été poursuivies pour des infractions pénales. 19 autres personnes auraient été déférées à la Cour Militaire de Rabat, bien qu'elles soient des civils. Parmi les détenus, il y aurait des membres d'organisations sahraouies de défense des droits de l'homme ainsi que des activistes politiques sahraouis.

1709. Par ailleurs, nous souhaiterions également attirer l'attention du Gouvernement de votre Excellence sur les allégations de violations ci-après:

1710. Lors de l'opération de démantèlement, un citoyen de double nationalité marocaine et espagnole et sa mère à qui il venait rendre visite, auraient subi des actes de violence. Les forces de sécurité auraient battu la mère d'Ahmed lui causant plusieurs blessures et des effets personnels lui auraient été volés dans sa tente. Au cours de l'arrestation et de l'interrogatoire d'Ahmed, les agents de sécurité l'auraient frappé à l'aide de bâtons, de tubes, de barres de métal et de casques. Pendant sa détention au siège de la police de Laâyoune, de l'urine et des excréments auraient été jetés sur lui.

1711. Le 9 novembre 2010, un autre Sahraoui aurait été arrêté à son domicile dans le quartier de Colomina Nueva. Lors de son arrestation et interrogatoire, il aurait également été frappé à la tête, au dos et aux reins avec des bâtons et des matraques entraînant une perte de connaissance à deux reprises. Il est allégué que la police l'a réanimé en déversant de l'eau sur lui. Il aurait en outre été privé de nourriture et d'assistance médicale pour ses blessures. A la suite des attaques subies lors de sa détention, il aurait souffert de nombreuses blessures et aurait eu des difficultés à marcher.

1712. Une commission d'enquête aurait été ouverte par le Parlement marocain sur le démantèlement du camp et les événements qui l'ont suivi.

Observations

1713. Le Rapporteur spécial remercie le Gouvernement de sa réponse, mais regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 25 septembre 2007, 27 juillet 2007, 18 janvier 2007, 18 mai 2006, 18 octobre 2005, 5 juillet 2004 et 18 février 2004. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits.

Nepal

Allegation letter

1714. On 31 August 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a letter of allegations regarding the death of Mr. **Devi Prasad Dhital**, also known as Hemraj, chairman of community radio Tulsipur FM.

1715. According to information received, on 22 July 2010, Mr. Devi Prasad Dhital was allegedly shot in the chest by at least four assailants while travelling on a motorcycle to Tulsipur from his home town of Urahari in the district of Dang. He reportedly died after being rushed to a hospital in Tulsipur. A man suspected of being one of the killers has allegedly been arrested by the police.

1716. It is alleged that Mr. Devi Prasad Dhital is the third media owner to be killed this year.

1717. While the motive behind the killing of Mr. Dhital is yet to be confirmed, concern was expressed regarding the safety of journalists and media personnel in the eastern and western regions of Nepal, as reports indicate that they are increasingly targeted by criminal groups.

Response from the Government

1718. In a letter dated 20 January 2011, the Government replied to the communication sent on 31 August 2010 as follows.

1719. The investigation process has been initiated by the designated police team of the District Police Office, Dang, with regard to the incident that occurred on 22 July 2010 at Urahari VDC Ward No.4, Hemnagar Jaspur, Dang District, Nepal, when Mr. Devid Prasad Dhital, also known as Hemraj, chairman of Tulsipur FM, was shot dead while travelling on a motorcycle by an unknown group. As the investigation is currently ongoing, the government expresses its commitment to bring the perpetrators to justice on the basis of actual facts and evidences.

1720. The initial investigation into the case suggests that Mr. Dhital's murder might equally have been motivated by other reasons rather than only his being a media person as he was also involved in various other businesses. He was the contractor for supplying ration to a Nepalese Army unit, had served as the chairman of Lions Club and Rapti Bus Board of Directors, had operated showroom of Toyota company in Nepalgunj, was involved in crusher business in Kapilbastu, and had been conducting economic transactions with Mr. Tulsiram B.K. who lived in Mumbai, India. The accuracy of the incident, however, would be clear when the results of the investigations are received in near future.

1721. With regard to the compensation to the family of the deceased, they will receive due remedy as per the prevailing law of Nepal on the basis of the results of the investigation as the case is currently being investigated. It may be noted that from the FY 2009/10 a Conflict-Affected Journalist Welfare Fund has been established in order to provide immediate relief to the conflict-affected journalists and their families. Moreover, the government has been providing financial assistance and compensation to the journalists by special decisions on the loss of their life, limb and property due to natural calamities and physical attacks.

1722. The Comprehensive Peace Accord, 2006 and the Interim Constitution of Nepal, 2007 have committed full press freedom. Under the title of Fundamental Rights in Part 3 of the Constitution, every citizen has the freedom of opinion and expression as well as the freedom to engage in any occupation or be engaged in employment, industry and trade. The

Government of Nepal is always effortful to protect and respect the rights guaranteed by the Constitution. The Working Journalists Act, 1993 has been formulated with the objective of protecting the interests and rights of the working journalists and ensuring their security. Similarly the Press Council has been constituted under the Press Council Act, 1992 for the development and promotion of healthy, independent and responsible journalism by way of maintaining the highest professional ethics of journalism. Likewise, the Press and Publication Act, 1991 intends to create an environment where the journalism sector can utilize the freedom of expression in a dignified and responsible way without fear.

1723. The Government of Nepal is committed to the protection of the journalists while maintaining peace and security in the country. Various security agencies are active in the country for ensuring security of all citizens including the journalists. The Local Administration Act, 1971 has made the provisions of district and regional security committees. Special security is provided to anyone by the decision of the District Security Committee if specific request is received from such person. It is worthwhile to note that various individuals and journalists have been utilizing such special security facilities from the government.

1724. The provisions of the Comprehensive Peace Accord, 2006 and the Interim Constitution of Nepal, 2007 have made clear that the promotion of human rights, protection of democratic values and norms and the end of impunity are matters of state priority. As the current state system is being led by the forces that had also led the peoples' movement while keeping democracy and protection and promotion of human rights at the centre, the Government of Nepal would like to reassure that there would not be any deviation or indifference on the part of the state in this respect.

Observations

1725. The Special Rapporteur thanks the Government for the response to his communication dated 31 August 2010.

1726. The Special Rapporteur calls upon the Government to guarantee freedom of the press and to create an environment where journalists and human rights defenders are able carry out their legitimate work without fear of persecution or restriction.

Pakistan

Urgent appeal

1727. On 19 April 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion or belief, sent an urgent appeal concerning Mr. **Khalid Mehmood Naqash** and Mr. **Muhammad Afzal**, who are currently detained in district jail of Jhelum, and concerning Mr. **Zafar Iqbal** from Mohallah Suleman Paris.

1728. According to the information received, a blasphemy case was registered under section 295-C of the Pakistani Penal Code on 3 July 2008 (FIR no. 270/2008) at the police station in Saddar Jhelum against Mr. Khalid Mehmood Naqash, who authored a book entitled "Quran aur Hum", and Mr. Muhammad Afzal, who wrote the preface of the book. They were arrested and detained in district jail of Jhelum on charges that the publication contained blasphemous content about Prophet Muhammad. Section 295-C of the Pakistani Penal Code provides that "whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine". On 20 May 2009, Lahore High Court Justice Malik Saeed Ijaz rejected the application for bail of Mr. Khalid

Mehmood Naqash and Mr. Muhammad Afzal. Their case is in the final stages and a decision is expected on 21 April 2010.

1729. During the proceedings at Session Court Rawalpindi, Mr. Zafar Iqbal acted as a witness for the defense. On 4 April 2010, around 11:00 a.m., two gunshots were fired by a veiled person in the direction of Mr. Iqbal's house in Mohallah Suleman Paris. On 5 April 2010, around 3:30 p.m., another four gunshots were fired at his house by two unidentified persons. On 8 April 2010, Mr. Zafar Iqbal tried to register a First Information Report with the District Police Officer of Jhelum, however, the police reportedly failed to do so or to provide protection to him and his family.

1730. A local religious leader, Mufti Mehmood Hussain Shaiq Hashmi, issued a fatwa on 11 April 2010, entitled "Zafar Iqbal's support for the person who degraded Holy Prophet (PBUH) and consequent verdict against him". This so-called religious verdict against Zafar Iqbal states, inter alia, the following: "Khalid Naqash openly and repeatedly used blasphemous words. Babu Mohammed Afzal is accomplice, friend and supporter of Khalid Naqash. Consequently Zafar Iqbal automatically becomes accomplice of Khalid Naqash. If one is a staunch supporter of a blasphemous person, one turns blasphemous oneself. Hence, verdict is issued that Zafar Iqbal is an accomplice of Khalid Naqash and Babu Mohammad Afzal."

1731. Furthermore, it has been alleged that Mufti Mehmood Hussain Shaiq Hashmi sent instructions to his followers to kill Mr. Zafar Iqbal. Concerns have been expressed that the lives of Mr. Khalid Mehmood Naqash, Mr. Muhammad Afzal, Mr. Zafar Iqbal and their family members are under threat.

1732. The Special Rapporteurs urged the Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Khalid Mehmood Naqash, Mr. Muhammad Afzal and Mr. Zafar Iqbal are respected and, in the event that the Government's investigations support or suggest the above allegations to be correct, the accountability of any person guilty of the alleged threats be ensured.

Response from the Government

1733. In its letter dated 23 June 2010, the Government of Pakistan responded to the joint urgent appeal of 19 April 2010, requesting information about the alleged detention of the two accused and the alleged life threats to a witness for the defence of the accused, on the charges of publishing blasphemous content.

1734. The Government of Pakistan informed that the matter was referred to the authorities concerned for the necessary investigation and response. As a result of the information received, the Government of Pakistan informed that local authorities have conveyed that after carefully examining the content of the book, a blasphemy case was registered in accordance with the laws of the land, under section 295 C of the Pakistani Penal Code, on 3 July 2008 in Jhelum, against the two accused on publishing blasphemous content in their book. Both the accused were arrested and challenged to the Court of Law. The case is pending in the court of the learned District before the Session Judge in Rawalpindi.

1735. The Government informed that with regard to the alleged firing at the house of the witness for the defence of the accused, it has been conveyed that the police officials visited the spot but did not find any evidence in this connection. In addition the Government of Pakistan informed that notables of the area have also expressed ignorance about any incident of firing. The Government of Pakistan informed that local authorities have been instructed to provide full protection to the life and property of the witness for the defence and his family members as and when requisitioned.

Urgent appeal

1736. On 30 December 2010, the Special Rapporteur, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the situation of Mr. **Siddique Eido**, coordinator of the non-governmental organization Human Rights Commission of Pakistan (HRCP)'s core group in Pasni, District Gwadar, and Mr. Yousaf Baloch.

1737. According to the information received, on 21 December 2010, Mr. Eido and Mr. Baloch were returning from a court hearing in Gwadar in a van, under police protection, when three vehicles, with no license plates, stopped the van in Pasni. Plainclothes men exited the first car, and men wearing uniforms of the Federal Paramilitary Force of Pakistan Frontier Constabulary the two other cars. They stormed inside the van, and despite some resistance from the police officers inside the vehicle, abducted Mr. Eido and Mr. Baloch.

1738. Mr. Eido and Mr. Baloch were under trial, with seven co-accused, in relation to an alleged attack on coastguards on 29 March 2010, in Pasni sub-district. Mr. Eido had been given pre-arrest bail in April 2010.

1739. Mr. Eido had received threats for reporting on human rights violations committed in the region. He feared that he might be disappeared.

1740. Serious concerns were expressed that the abduction of Mr. Eido may be related to his legitimate work in defense of human rights. Further concern was expressed for the physical and mental integrity of Mr. Eido and Mr. Baloch.

Urgent appeal

1741. On 24 January 2011, the Special Rapporteur, together with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the promotion and protection of human rights while countering terrorism, sent an urgent appeal expressing their condolences in relation to the killing of the late Governor of Punjab, Mr. **Salman Taseer**, on 4 January 2011. The Special Rapporteurs submitted the urgent appeal regarding their concerns at the circumstances surrounding the killing of Mr. **Taseer**, including issues related to the implementation of the blasphemy provisions and threats received by those opposing such provisions.

1742. According to the information received, Mr. Taseer's opposition to the blasphemy provisions had allegedly incensed many groups and individuals, including his alleged killer Mr. Mumtaz Qadri, opposed to those seeking changes of the current criminal provisions on offences relating to religion (sections 295 to 298C of the Pakistan Penal Code).

1743. There is reportedly a general atmosphere of fear in Pakistan due to public incitement to violence against those seeking reforms of the blasphemy provisions. The examples set out below illustrate a number of cases of incitement to violence and hostility against those seeking reform of the law or alleged to have committed blasphemy.

Events surrounding the killing of Mr. Salman Taseer:

1744. On 9 January 2011, following the killing of the Governor Mr. Taseer, a rally of 50,000 people organized by Tahaffauz-e-Namoos-e-Risalalt, a conglomerate of parties opposed to changes to the blasphemy provisions, took place in Karachi. The participants in the rally were demonstrating against amendments to the blasphemy provisions in Pakistan and to show support for the alleged killer, Mr. Mumtaz Qadri. In the rally, Mr. Qadri was described as a hero and his courage was saluted. During the rally, some of the speakers openly called for those showing support for the amendment to the blasphemy provisions, to

face the same fate as Mr. Salman Taseer. No action was taken in respect of those inciting violence and hatred, despite a reported presence of 3,000 police officers.

1745. The death of Mr. Salman Taseer had led to the Jamaate Ahle Sunnat Pakistan, one of the biggest religious organizations of the Barelvi representing 500 religious scholars, to state that “there should be no expression of grief or sympathy on the death of the governor, as those who support blasphemy of the prophet are themselves indulging in blasphemy”. The group of scholars noted the “courage and religious zeal” of Mr. Salman Tasser’s killer. Furthermore, the scholars said the action “had made Muslims around the world proud”. In addition, the group of scholars has reportedly said that the “so called” intellectuals, ministers, politicians and television anchors who oppose the blasphemy provisions and support those committing blasphemy should learn a lesson from Mr. Taseer’s death.

Debate and events surrounding proposals for reform of the blasphemy provisions:

1746. In November 2010, a Parliamentarian and former Information Minister, Ms. Sherry Rehman, submitted a private members’ bill to the National Assembly Secretariat seeking reform of the blasphemy provisions. The bill seeks to eliminate the death penalty for the use of derogatory remarks in respect of the Holy Prophet and penalize false blasphemy accusations. Subsequently, two fatwas demanding the death of Ms. Sherry Rehman have been declared. The first has been given by Mr. Munir Ahmad Shakir, Imam of the Sultan Mosque in Karachi. A second fatwa has been published in a pamphlet and distributed by the religious organization Tanzeem-e-Islami. Moreover, there have been attempts in January 2011 to file blasphemy charges against Ms. Rehman in the Punjab city of Multan. This has led to fears for Ms. Rehman's life and wellbeing.

1747. In addition, those seeking to report on such incitement to violence have been subject to death threats and are reportedly targeted by opponents to the reform of the blasphemy provisions. The journalist Mr. Kamran Ali Chisti has received death threats after lodging complaints against the Imam of Sultan Mosque in Karachi following the issuance of the fatwa against Ms. Sherry Rehman.

1748. Following the death of Mr. Salman Taseer, Mr. Shazad Kamran, who provides moral, legal and financial support for people convicted of violating the blasphemy provisions, is also reported to have received death threats.

1749. Some sections of the Pakistan media have given overwhelming coverage to clerics who have declared it an obligation for Muslims to kill blasphemers and offered cash rewards. The use of media, including social media, has led to websites on social networks in support of Mr. Mumtaz Qadri’s acts. There have been hostile references and death threats to other activists and lawyers, including Ms. Asma Jahangir (President of the Supreme Court Bar Association and former United Nations Special Rapporteur on freedom of religion or belief), with threats such as the following, “so far as Asma Jahangir is concerned, she is about to be sent to her friend”, i.e. Mr. Salman Taseer. Furthermore, a 74-page pamphlet against Ms. Jahangir has been distributed on 19 January 2011, and three journalists have written an article stating that she was a blasphemer.

1750. On 16 January 2011, it has also been reported that Ms. Sherbano Taseer, daughter of the late Mr. Salman Taseer, has received threats to her life, which include for example the warning that she “should refrain from issuing statements and must remember her father’s fate”.

Events surrounding the conviction of Ms. Asia Bibi:

1751. On 8 December 2010, the Imam Yousuf Quershi, of Mohabat Khan mosque in Peshawar, pronounced a reward of Rs. 500,000 for anyone who kills Ms. Asia Bibi, a member of the Christian minority who had been sentenced to death on blasphemy charges

by Sheikhpura district and sessions court on 7 November 2010. Furthermore, in Ms. Bibi's village Ittanwali, the cleric Mr. Maqsood Ahmed Masoomi has stated that anyone who commits blasphemy in the village "should be killed on the spot".

1752. It has been reported that the Minister for Minorities, Mr. Shab haz Bhatti, has received death threats both during the case of Ms. Bibi and now publicly following the assassination of Mr. Salman Taseer. Fatwas calling for his beheading have been issued and messages of violence have been publicly spread. There has been no formal measure by your Excellency's Government such as registering cases against those inciting to violence and prosecuting them.

1753. In view of the current situation in Pakistan, we express grave concern concerning the safety of Ms. Asia Bibi and those who have been imprisoned under blasphemy provisions. Furthermore, it has been reported that Ms. Bibi faces the threat of a suicide attack in jail. The threat is allegedly from a group called "Moauiya", which plans to mount a suicide attack on Sheikhpura district jail where Ms. Bibi is currently being detained.

1754. On 29 October 2010, Muslim inmates at a prison in Khyber Pakhtunkhwa Province, allegedly stoned a young Christian man named Imran Masih who had been convicted under the blasphemy provisions and sentenced to ten years imprisonment on 11 January 2010.

1755. In addition, concern has been expressed at the possibility of attacks on members of religious minorities, including on their places of worship.

Recent blasphemy cases:

1756. On 11 January 2011, a Muslim prayer leader and his son were jailed to life imprisonment for blasphemy. The sentence was delivered on 11 January 2011, by an anti-terrorism court in Dera Ghazi Khan, in the eastern Punjab Province. The prayer leader Mr. Mohammed Shafi and his son Mr. Mohammed Aslam were alleged to have torn down and trampled on a poster of a gathering to mark the birthday of the Prophet Mohammed. Both were arrested in April 2010. The defendants belong to the Deobandi school of Islam, while the complainant belongs to the Barelvi sect. The lawyers for the defendants claim that the allegations are motivated by intra-religious difference. The Barelvi sect is reported to be at the forefront of the recent campaign against any reforms of the blasphemy provisions.

1757. The Special Rapporteur on freedom of religion or belief recalled the alleged incidents relating to blasphemy charges addressed in earlier communications dated 19 April 2010, 27 July 2010 and 22 November 2010.

Observations

1758. The Special Rapporteur thanks the Government of Pakistan for the reply to his communication sent on 19 April 2010 and 24 January 2011. However, he regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 5 May 2011 and to earlier communications sent on 24 January 2011 and 30 December 2010. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

1759. The Special Rapporteur would like to stress that blasphemy legislation should never be used to censure inter-religious and intra-religious criticism, as the Special Rapporteur on freedom of religion or belief has also underscored (see E/CN.4/2000/65, para. 111). The Special Rapporteur also recommends a review of the Penal Code and to consider an alternative to blasphemy law by protecting individuals against advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Panama

Llamamiento urgente

1760. El 19 de abril de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la Lic. **Magaly Castillo** y la Alianza Ciudadana Pro Justicia. La Alianza Ciudadana Pro Justicia es una asociación de veinte organizaciones de la sociedad civil panameña, que trabaja con el fin de mejorar la administración de justicia en la República de Panamá. La Alianza observa, examina y denuncia la corrupción, abusos de autoridad y violaciones de los derechos humanos en Panamá. La Lic. Castillo es abogada y Directora Ejecutiva de la Alianza Ciudadana Pro Justicia.

1761. Según las informaciones recibidas, durante las últimas semanas la Lic. Castillo, la Alianza Ciudadana Pro Justicia y sus integrantes habrían sido objeto de una campaña de desprestigio por parte de las autoridades panameñas. La campaña habría empezado después de la suspensión de un contrato de consultoría entre el Ministerio Público y una empresa de consultoría, la Consultora Internacional Multidisciplinaria Aguilar y Asociados S.R.. El 18 de marzo de 2010, el Ministerio Público habría comunicado la suspensión del contrato a la Consultora Internacional Multidisciplinaria Aguilar y Asociados S.R. en una carta firmada por el Sr. Giuseppe Bonissi, el nuevo procurador general de la nación. La carta habría citado el nombre de la Lic. Castillo. La Consultora Internacional Multidisciplinaria Aguilar y Asociados habrían contactado a la Lic. Castillo como posible asesora en materia de derechos humanos. La labor de consultoría habría sido adjudicada en una licitación internacional realizada por los Proyectos del Banco Interamericano de Desarrollo (BID), que tiene previsto la capacitación de 30 funcionarios del Ministerio Público durante un período de siete meses.

1762. Esta cancelación y la campaña de desprestigio habrían coincidido con la participación de la Lic. Castillo y la Alianza Ciudadana Pro Justicia en una audiencia temática ante el 138 Período de Sesiones de la Comisión Interamericana de los Derechos Humanos (CIDH), que tuvo lugar el 23 de marzo de 2010. La audiencia trataba de la situación de la administración de justicia en Panamá. Además, durante los últimos meses la Lic. Castillo habría criticado públicamente la suspensión reciente de la anterior procuradora general de la nación, la Sra. Ana Matilde Gómez.

1763. Durante los días siguientes, varios funcionarios del Ministerio Público y otras agencias gubernamentales habrían aparecido en programas de televisión y de radio, y habrían hecho declaraciones sobre la participación de la Lic. Castillo en la consultoría. Por ejemplo, durante un programa de televisión llamada “Encontremos Soluciones”, que se habría sido transmitido en Canal 21 RCM el 24 de marzo, los presentadores habrían hecho referencia a la Lic. Castillo en relación con pagos que ella supuestamente habría recibido del Gobierno. “Magaly Castillo es una de las que el procurador encargado Bonissi le acaba de suspender un contrato de Cientos de Miles de dólares... ¿Cómo es que están emplanillados allá con miles de dólares?”

1764. El 30 de marzo de 2010 la Alianza Ciudadana Pro Justicia habría realizado una conferencia de prensa para rechazar las acusaciones en su contra y en contra de la Lic. Castillo. Las representantes de la Alianza habrían declarado sin lugar a equívocos que nunca habría existido un contrato entre la Lic. Castillo y la Consultora Internacional Multidisciplinaria Aguilar y Asociados S.R. . Habrían aclarado que la Lic. Castillo formaba parte de una lista de potenciales consultores que podrían participar en la consultoría, y que los honorarios previstos para la realización de la consultoría eran de USD5,000 durante todo el período del contrato. Una comunicación de prensa publicada por la Alianza durante la conferencia habría sido firmada por catorce organizaciones de la sociedad civil, quienes

habrían solicitado el fin de la campaña de desprestigio de la que estaría siendo objeto la Lic. Castillo.

1765. El mismo día, la Secretaría de comunicación del Estado habría enviado un comunicado a los medios de comunicación en Panamá. Este comunicado confirmó que el Gobierno de Panamá apoya la libertad de expresión y el derecho de la sociedad civil de expresar su opinión sobre decisiones que tome el Gobierno Nacional. Sin embargo, se declaró que “lo que Magaly Castillo debería hacer como miembro de la sociedad civil es aclarar la asesoría de 10 mil 400 dólares al mes que le adjudicó la Procuradora separada, Ana Matilde Gómez, en vez de echarle la culpa al Gobierno”.

1766. El 6 de abril, dos ministras de Estado habrían criticado públicamente a la Alianza Ciudadana Pro Justicia mientras aparecían en “Debate Abierto”, un programa de televisión transmitido en Canal 4. Las Ministras habrían cuestionado sobre la constitución de la Alianza, de sus estatutos y de su composición, y habrían sugerido que la Alianza Ciudadana podría carecer de legitimidad. La Sra. Alma Cortes, Ministra de Trabajo y Desarrollo Laboral, habría sugerido que los grupos de sociedad civil no estaban cualificados para emitir opiniones. Asimismo, habría declarado que iba a solicitar un censo de “todos estos gremios” para aprender en dónde están ubicados y quiénes les representan, “porque si van a querer trabajar con nosotros - el Gobierno - tendrán que definir una postura y deponer intereses personales”.

1767. La Ministra habría criticado a la Lic. Castillo por su defensa de la previa procuradora, “que todo el mundo sabía de sus desatinos y a lo mejor de su incapacidad y la de su equipo, que administraba justicia con su grupito”. Asimismo la Ministra habría criticado a la participación de la Lic. Castillo en la audiencia ante la CIDH. Ella habría dicho, “Me tienes muy decepcionada”, porque las denuncias de la Lic. Castillo “pueden constituirse en un instrumento calumnioso e injurioso, que para sus efectos son comunicados anónimos”.

1768. Asimismo, durante el programa anteriormente mencionado las Ministras habrían revelado que la Lic. Angélica Maytin, la Directora Ejecutiva de la Fundación para el Desarrollo de la Libertad Ciudadana, que es una de las organizaciones constitutivas de la Alianza Ciudadana Pro Justicia, habría sido investigada por el Órgano Ejecutivo en relación con su declaración personal de renta anual. Se informó que es posible que otros integrantes de la Alianza puedan ser objeto de investigaciones similares.

1769. El 8 de abril, la Ministra de Trabajo habría sugerido que si las organizaciones y grupos de sociedad civil querían examinar la vida pública y privada de los funcionarios públicos, entonces las vidas públicas y privadas de los representantes de sociedad civil también podrían ser investigadas.

1770. Se temió que la campaña de desprestigio de la que habría sido objeto de la Lic. Castillo, la Alianza Ciudadana Pro Justicia y sus integrantes esté relacionada con las actividades que ellos realizaban para promover la administración de justicia en Panamá. Se expresó grave preocupación por el hecho de que estas declaraciones podrían ser indicios de intentos de intimidación y acoso a los grupos o individuos que critican a los funcionarios y autoridades panameñas, y que estas alegaciones podría ser una forma de represalia por la participación de la sociedad civil en la audiencia ante la CIDH durante el mes de marzo de 2010. Se expresó especial preocupación sobre las implicaciones de estas alegaciones en el ejercicio de la libertad de expresión en Panamá. Las alegaciones, de ser confirmadas, se enmarcan en un contexto de gran vulnerabilidad para los defensores de los derechos humanos en Panamá.

Llamamiento urgente

1771. El 29 de julio de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la detención y retención de documentos de identificación del Sr. **Francisco Gómez Nadal**, así como por el supuesto acoso y hostigamiento del que ha sido víctima. El Sr. Gómez Nadal, de nacionalidad española, trabaja como periodista y posee una trayectoria de varios años como defensor de derechos humanos en Panamá.

1772. Según las informaciones recibidas, el 4 de julio de 2010, el Sr. Gómez Nadal se disponía a viajar, cuando fue detenido en el Aeropuerto de Tocumen en Panamá en base a una orden del Servicio Nacional de Migración. Sin mediar ninguna explicación, le habrían retenido su cédula panameña y su pasaporte español, lo que habría dado lugar a la intervención de la Embajada de España en Panamá.

1773. De acuerdo con la información recibida, varias razones habrían sido presentadas por las autoridades para justificar la detención del Sr. Gómez Nadal y la retención de sus documentos, entre ellas: supuestas irregularidades fiscales; una variación de las condiciones por las que le fue concedida la residencia; y la supuesta falta de pago al Seguro Social.

1774. Según se tiene conocimiento, el Sr. Gómez Nadal habría presentado documentación que demostraría como infundados los argumentos presentados por las autoridades panameñas. Por el momento su situación sería incierta ya que las autoridades de Migración en Panamá no habrían dado a conocer formalmente los motivos de esta acción.

1775. Asimismo, se tiene información que el Sr. Gómez Nadal se presentó ante la Dirección general de Ingresos en donde le pidieron la última declaración de la renta. Sin embargo, después de haberla presentado, se le habría negado el “paz y salvo” ya que, según las autoridades, tenía una deuda de \$114.00 desde el año 2007. Según la información disponible, el Sr. Gómez Nadal poseería actualmente un crédito fiscal de \$2,000.00 y nunca antes habría tenido problemas para extender el “paz y salvo”.

1776. De acuerdo con la información recibida, el Sr. Gómez Nadal interpuso un recurso de Habeas Corpus ante la Corte Suprema de Justicia, para establecer la razón por la cual se habría indicado en el Aeropuerto que podría salir del país pero no retornar.

1777. Se expresó preocupación por las alegaciones de que la situación en la que se encuentra el Sr. Francisco Gómez Nadal pudiera estar relacionada con su labor periodística y por sus actividades en defensa de los derechos humanos. Asimismo, se expresó preocupación por la inseguridad jurídica de su estatus en el país al habersele retenido sus documentos de identificación.

Llamamiento urgente

1778. El 6 de septiembre de 2010 el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, la Relatora Especial sobre la independencia de magistrados y abogados, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, y el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, enviaron un llamamiento urgente señalando a la atención urgente la información recibida en relación con los sucesos ocurridos en el departamento de Bocas del Toro entre los días 7 a 10 de julio de 2010 y, en conexión con éstos, en relación con la situación de ciertos sectores de la sociedad civil panameña que estarían trabajando en la investigación y seguimiento de dichos sucesos. En particular, se querría llamar la atención sobre la situación de la Lic. **Magaly Castillo** y la organización Alianza Ciudadana Pro Justicia. La Lic. Castillo es abogada y Directora Ejecutiva de la

Alianza Ciudadana Pro Justicia. Asimismo, se querría llamar la atención sobre la situación de la organización y los miembros de Human Rights Everywhere.

1779. La Sra. Castillo y el Sr. Francisco Gómez Nadal, éste último representante legal de la organización Human Rights Everywhere en Panamá, han sido objeto de llamamientos urgentes por parte del Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión y de la Relatora Especial sobre la situación de los defensores de los derechos humanos enviados el 19 de abril y el 29 de julio de 2010, respectivamente.

1780. Según las informaciones recibidas, durante los días 7 y 10 de julio de 2010, se habrían producido enfrentamientos en Changuinola, departamento de Bocas del Toro, entre cuerpos y fuerzas de seguridad del Estado panameño y trabajadores de las plantaciones bananeras, en su mayor parte miembros de la comunidad indígena Ngäbe-Bugle. Desde el 2 de julio, estos trabajadores se encontraban realizando una huelga en contra de ciertos artículos de la recién aprobada Ley 30 de 12 de junio de 2010. Tras varios días de huelga, las fuerzas de seguridad habrían decidido intervenir para disolver una manifestación de los trabajadores de las plantaciones haciendo uso de la fuerza y de determinado tipo de material antidisturbios, incluyendo cartuchos impulsores de perdigones de plomo (calibre 12), balines de goma, munición de diverso calibre y gases lacrimógenos de diverso tipo.

1781. Según las autoridades, como consecuencia de dichos enfrentamientos resultaron al menos dos personas muertas, los señores Antonio Smith y Virgilio Castillo, las cuales, según información recibida, habrían fallecido por la acción directa de las fuerzas del orden. Asimismo, se ha recibido información según la cual, además de las personas mencionadas, habrían fallecido otras cinco personas como consecuencia de los enfrentamientos, incluyendo tres menores de edad por el uso de gases lacrimógenos.

1782. Como consecuencia de estos enfrentamientos, se habrían producido más de 150 heridos y más de un centenar de detenidos. Entre los heridos habría un gran número de casos con impacto de perdigones de plomo en la cabeza y el tórax. Asimismo, se ha recibido información fiable sobre casos de personas detenidas que habrían podido sufrir tortura u otros tratos crueles, inhumanos o degradantes a manos de las fuerzas y cuerpos de seguridad, incluyendo el caso de una persona que habría sido arrodillada, esposada y apuntada con una pistola; el caso de otra a la que le habrían vertido vinagre en las heridas; numerosos casos de personas que habrían recibido gas pimienta en la cara; otro caso al cual antes de darle de comer habrían rociado con gasolina la comida; y numerosos casos, incluidas tres mujeres, que habrían sido desnudadas y humilladas. El 21 de julio, el Gobierno habría anunciado la creación de una comisión especial para investigar los hechos.

1783. En el contexto de los acontecimientos ocurridos en Bocas del Toro, el Sr. Valentín Palacio habría permanecido en paradero desconocido entre los días 8 y 12 de agosto. El Sr. Palacio habría reaparecido el día 12 de agosto y presentado en conferencia de prensa por el Director de la Policía Nacional.

1784. Según los informes recibidos, tras los sucesos de Bocas del Toro, se habrían intensificado los actos de intimidación y acoso por parte de la prensa nacional y de miembros de partidos políticos contra ciertos sectores de la sociedad civil panameña, así como contra destacados defensores de los derechos humanos en el país.

1785. En este contexto, el día 10 de agosto, miembros de la organización de la sociedad civil Alianza Ciudadana Pro Justicia habrían acompañado a varios miembros de la organización Asamblea de la Sociedad Civil para presentar un recurso de habeas corpus en nombre del Sr. Palacio ante la Corte Suprema de Justicia.

1786. Posteriormente, el 16 de agosto de 2010, la señora Magaly Castillo habría recibido una citación de la Fiscalía Auxiliar de Panamá para comparecer al día siguiente a declarar

dentro del sumario del caso del Sr. Palacio. La Sra. Castillo habría acudido a dicha citación pero se habría negado a prestar declaración por considerar que el Fiscal Auxiliar de Panamá mantiene una opinión negativa sobre la sociedad civil, la cual habría hecho pública en varias ocasiones mediante declaraciones a la prensa.

1787. El día 20 de agosto, el partido político Cambio Democrático habría publicado en el diario “La Prensa” un anuncio a página completa ofreciendo una recompensa de 5,000 Balboas (equivalente a USD 5,000) a quienes pudieran dar información “que aclare la falsa desaparición de Valentín Palacio”. El anuncio habría acusado a miembros de la oposición política así como a organizaciones de la sociedad civil panameña, mencionando explícitamente a la organización Human Rights Everywhere, de realizar falsas acusaciones contra el Gobierno y el Presidente de la República. La mencionada organización habría trabajado activamente en la investigación de los hechos acaecidos en Bocas de Toro, en el mes de julio.

1788. El día de la publicación del anuncio arriba mencionado, miembros de varias organizaciones de la sociedad civil habrían expresado su creciente temor ante la intensificación de actos de acoso e intimidación contra ellos tanto en prensa nacional como en varios canales de televisión.

Observaciones

1789. El Relator lamenta que, en el momento de finalizar este informe, no se había recibido respuesta a cuatro comunicaciones enviadas. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato es por ello que insta al Gobierno a que le proporcione una respuesta acerca de los casos mencionados.

1790. El 28 de octubre de 2010, el Relator Especial publicó un comunicado de prensa en el cual manifestó su preocupación por la condena a prisión a dos periodistas panameños por los delitos de calumnia e injuria, que habían sido absueltos en una primera instancia. Según la información que se conoce, además se les inhabilitó para el ejercicio de actividades relacionadas con su profesión por un año. El Relator recalcó que este pronunciamiento judicial representa un mal precedente para los esfuerzos que se realizan para despenalizar este tipo de hechos, especialmente en casos como el presente en donde el hecho que originó la sanción se relaciona con información sobre actuaciones de funcionarios públicos.

Peru

Llamamiento urgente

1791. El 1 de diciembre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente en relación a los actos de hostigamiento y amenazas contra la **Sra. Carmen Rosa Arévalo Salas**, miembro directriz de la Comisión de Justicia y Paz – Derechos Humanos del Vicariato Apostólico de Iquitos (CJPDHVAI), entidad de la Iglesia Católica.

1792. Según las informaciones recibidas, en los últimos meses, la Sra. Arévalo Salas habría sido sometida a varias amenazas así como de actos de hostigamiento por parte de personas desconocidas.

1793. Se informa que entre el 13 de julio y 29 de agosto 2010, la Sra. Arévalo Salas habría recibido unas 40 llamadas telefónicas, siendo a través de las cuales amenazada y hostigada por personas desconocidas. Además, durante una de las llamadas, su interlocutor le habría avisado que se cuidase porque la podrían violar.

1794. Asimismo, se informó que el 22 de octubre de 2010, aproximadamente a las 19:45 hs., la Sra. Arévalo Salas habría sido hostigada al dirigirse hacia su domicilio tras haber salido de su oficina. Según se informa, mientras conducía hacia su domicilio en motocicleta, un automóvil de color blanco habría comenzado a cerrarle el paso y conducirla hacia lugares donde podía estrellarse. Ante las insistentes acciones peligrosas del mismo automóvil, la Sra. Arévalo Salas habría intentado acelerar y buscar un lugar donde hubiera concentración de personas; sin embargo, en esos momentos se habría dado cuenta que los frenos de su motocicleta no funcionaban, habiendo sido averiados. Con la ayuda de algunas personas, la Sra. Arévalo Salas habría eventualmente logrado detener su vehículo.

1795. Posteriormente, el 23 de octubre, la Sra. Arévalo Salas habría presentado la denuncia ante la policía local, la cual habría certificado que el sistema de frenos de la motocicleta de la Sra. Arévalo Salas habría sido manipulado con el fin de que no funcionara.

1796. Según se informó, durante los últimos meses la Sra. Arévalo Salas habría realizado varias actividades de defensa de los derechos humanos, entre ellas el representar a los pueblos indígenas del Río Marañon en su reclamo de reparaciones por el derrame de petróleo producido por una barcaza de la empresa Plus Petrol, y una campaña a favor del religioso hermano de La Salle, Sr. Paul McAuley, quien, según se informa, correría el riesgo de ser expulsado del Perú por ser miembro de la Red Ambiental de Loreto. Se informó asimismo que la Sra. Arévalo Salas habría denunciado de manera sistemática los supuestos abusos contra la población por parte de funcionarios estatales.

Llamamiento urgente

1797. El 15 de diciembre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con el Sr. **Pepe Julio Gutiérrez Zevallos**, Presidente del Frente de Defensa del Valle del Tambo. El Frente de Defensa del Valle del Tambo es una organización que coordina acciones contra las actividades del proyecto minero “Tía María”, ejecutado por la empresa “Southern Perú”, en los distritos de Cocachacera y Deán Valdivia, en la provincia de Islay, Región Arequipa.

1798. Según las informaciones recibidas, el 19 de noviembre de 2010, el Sr. Gutiérrez Zevallos habría sido denunciado por el Procurador de la República ante el Fiscal de Islay, a raíz de su participación en la promoción de una movilización contra la Minera “Tía María”. Se informa que desde el 9 de abril de 2009, varias organizaciones habrían re-iniciado manifestaciones establecidas en 2008 en contra de varios decretos gubernamentales por considerar que éstos atentan contra el derecho de la población afectada a ser consultada sobre el uso de sus tierras y que vulneran los derechos humanos por su impacto medioambiental.

1799. Además, el 2 de diciembre de 2010, aproximadamente a las 1:30 de la madrugada, se habría prendido fuego al vehículo del Sr. Pepe Julio Gutiérrez Zevallos frente a su domicilio en la calle Deán Valdivia, cuadra 11 de Cocachacra. Se informa que el vehículo habría quedado seriamente dañado tras el incendio. Se informa asimismo que antes de este hecho, los dirigentes del Frente de Defensa del Valle del Tambo habrían recibido varias amenazas así como apremios legales.

1800. Se expresó preocupación por la integridad física y psicológica del Sr. Pepe Julio Gutiérrez Zevallos, así como otros integrantes del Frente de Defensa del Valle del Tambo. Asimismo, se expresó preocupación por las alegaciones de que la destrucción de su propiedad así como la denuncia en su contra pudieran estar relacionadas con sus actividades de promoción y protección de los derechos humanos.

Respuesta del Gobierno a una comunicación enviada con anterioridad

1801. Con fecha 25 de noviembre de 2010, el Gobierno envió una respuesta a la comunicación con fecha de 26 de agosto de 2009 referida al caso del **Sr. Andres Luna Vargas** que se detalla a continuación.

1802. Conforme a la documentación adjunta se aprecia que en el Distrito Judicial de Piura no se encuentra registrada alguna denuncia o investigación al respecto de los presuntos actos de intimidación y amenazas de muerte contra el Sr. Luna Vargas. Asimismo, la Representación del Poder Judicial ante el Consejo Nacional de Derechos Humanos (CNDH) reporta la no existencia de proceso alguno relacionado con estos hechos. De otro lado, la Representación del Ministerio del Interior ante el CNDH informe que el Sr. Luna Vargas fue citado a la Sección de Investigación de Homicidios con la finalidad de recepcionar su declaración respecto a los supuestos actos efectuados en su contra. No concurriendo el mencionado ciudadano a la referida citación, razón por la que no se han podido dilucidar los hechos señalados. El Gobierno adjunta los antecedentes en 28 folios.

Observaciones

1803. El Relator Especial agradece al Gobierno la respuesta recibida. Sin embargo, lamenta que, en el momento de finalizar este informe, no se había recibido respuesta a cuatro comunicaciones enviadas. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato es por ello que insta al Gobierno a que le proporcione una respuesta acerca de los casos mencionados.

Philippines

Allegation letter

1804. On 8 July 2010, the Special Rapporteur, jointly with Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an allegation letter concerning the recent killings of four journalists, Mr. **Desidario Camangyan**, Mr. **Joselito Agustin**, Mr. **Nestor Bedolido**, and Mr. **Jose Daguio**.

1805. According to information received, on 14 June 2010, Mr. Desidario Camangyan, radio journalist and host of a discussion programme on Sunshine FM, was killed while hosting a singing competition in Manay, Davao Oriental province. The gunman reportedly shot him in the back of the head while the journalist was seated on stage before fleeing. Mr. Camangyan and his colleagues had criticized local politicians and those responsible for illegal logging for almost a month and had received threats. He had also campaigned for the incumbent mayor of Mati City, the provincial capital, in elections held in May.

1806. On 15 June 2010, Mr. Joselito Agustin, radio journalist of DZJC Aksyon Radyo, was riding a motorcycle with his nephew when he was shot four times by two men on another motorcycle in Laog City, Ilocos Norte province. He died in hospital the following day and his nephew was wounded. Mr. Agustin was reportedly known for his candid on-air commentaries against official corruption and had accused a politician of corruption in his programme. He had received death threats in the weeks before being killed. Gun shots were also allegedly fired at Mr. Agustin's home on 7 May 2010.

1807. On 19 June 2010, Mr. Nestor Bedolido, reporter for The Kastigador weekly newspaper, was shot six times by two gunmen in Digos City, Davao del Sur province. He

died on his way to hospital. He was known for his critical writing about an influential politician in Davao Del Sur.

1808. On 3 July 2010, Mr. Jose Daguio, former radio commentator and part-time columnist, was shot at close range inside his house in Barangtay Tuga City. While the possible motive may be linked to a dispute over a road project contract, it has been reported that the killing may have been related to his work as a former journalist.

1809. Concern was expressed that the killings of Mr. Desidario Camangyan, Mr. Joselito Agustin, and Mr. Nestor Bedolido in particular are related to their criticisms of public officials and their work in exposing corruption. Further concern was expressed regarding a climate of impunity in the Philippines as journalists continue to be targets of attacks and killings.

Response from the Government

1810. In a letter dated 7 September 2010, the Government shared the following information provided by the Presidential Human Rights Committee and the Department of Justice of the Republic of the Philippines.

1811. In the case of Mr. Desidario Camangyan, who was gunned down in Manay, Davao Oriental on 14 June 2010, a complaint for murder was filed against Police Officer 1 Dennis Lumikid (of the Philippine National Police City Command in Mati City) and Barangay Captain Ramon Antoling, Sr. (of Barangay Macopa in the Municipality of Manay) before the Office of the Provincial Prosecutor of Davao Oriental on 21 June 2010. The case is now under preliminary investigation.

1812. In the case of Mr. Joselito Agustin, who was gunned down in Laoag, Ilocos Norte on 15 June 2010, a complaint for murder was filed against Vice Mayor Pacifico Velasco (of the Municipality of Bacarra of the same province) and a certain Mr. Leonardo Banaag, Jr. (of Barangay San Simon, Bacarra, Ilocos Norte) before the Office of the City Prosecutor of Laoag City on 21 June 2010. The case is now under preliminary investigation.

1813. In the case of Mr. Nestor Bedolido, who was gunned down in Davao del Sur on 19 June 2010, a complaint for murder was filed against Artemio Timosan, Jr., and Ritchie Mirafuentes before the Office of the City Prosecutor of Digos City on 23 June 2010. The case is now under preliminary investigation.

1814. In the case of Mr. Jose Dagio, the accuracy of the facts stated in the letter is yet to be established. Relevant information will be submitted as soon as they become available.

Allegation letter

1815. On 19 July 2010, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the situation of human rights defenders, sent an allegation letter concerning the death of Mr. Suwaib Upham, a witness in the trials related to the “Maguindanao Massacre”.

1816. The mandate-holders had previously addressed the Government in relation to the “Maguindanao Massacre” in a letter dated 30 November 2009, to which the Government replied in communications dated 10 December 2009 and 25 January 2010. The Special Rapporteur on extrajudicial executions noted in a report submitted to the Human Rights Council that he appreciated the responses provided by the Government about the actions taken by various Government branches and agencies to investigate and prosecute the alleged perpetrators of the Maguindanao massacre. However, the Government did not provide the requested information about the private militia of the family of the Governor of Maguindanao Province, the measures taken to disband the militia, and the relationship between the private militia and government security forces in Maguindanao. Furthermore,

the Government did not provide the requested information on measures to prevent election-related violence (A/HRC/14/24 Add.1).

1817. According to information we have now received, on 14 June 2010, an unidentified gunman shot and killed Mr. Suwaib Upham, a witness to the Maguindanao killings, in Parang municipality, Maguindanao. Reports made available to me indicate that Mr Upham had agreed in February 2010, to testify against suspects arrested in connection with the “Maguindanao Massacre” on condition that he is provided with witness protection. Three months before he was killed, protection concerns regarding Mr. Upham were raised with the Justice Department officials in Manila, reportedly the department was still considering his request for protection at the time of his killing.

1818. Mr. Upham had allegedly been a militia member for the Ampatuans, whose family members have been arrested in connection with the “Maguindanao's massacre”. It is alleged that Mr. Upham knew the inner workings of the Ampatuans' militia operations, their sources of weapons, and the command structure of the police, military, and paramilitary forces in Maguindanao. He also knew details of past abuses perpetrated by the Ampatuans and their private army.

Response from the Government

1819. In a letter dated 20 October 2010, the Government informed that, with regard to the killing of Mr. Suwaib Upham in Parang, Maguindanao on 14 June 2010, he is not included as one of the witnesses for the prosecution of the “Maguindanao Massacre” case. Neither was his name embodied in the list of possible witnesses submitted by the prosecution to the court during the preliminary conferences. According to the latest information from the Criminal Investigation and Detection Group of the Autonomous Region of Muslim Mindanao (CIDG-ARMM), the investigation is still on-going to ascertain the identity of Mr. Upham's assailant.

1820. As to the status of the ongoing investigation and prosecution of the Maguindanao Massacre case itself (i.e. *People v. Andal Ampatuan, Jr., et-al.* Criminal Case Nos. Q-09-162148 to 72; Q-09-162216 to 31; and Q-10-162654 to 66), please be informed that on 24 March 2010, the court admitted the amended information against one hundred ninety-six (196) other accused, including Andal Ampatuan, Sr. Zaldy Ampatuan, Sajid Ampatuan, Saudi Ampatuan, Anwar Ampatuan, Akmad Ampatuan, other Ampatuan relatives, police officers and civilian auxiliaries involved in the Massacre. As of 28 July 2010, seventeen (17) out of the one hundred ninety-seven (197) accused have been arraigned. Preliminary conferences ensued on 4, 5 and 11 August 2010, wherein the prosecution manifested that it will present a total of two hundred twenty-seven (227) witnesses, while the defense said that it will present three hundred seventy-one (371) witnesses, more or less, for accused Ampatuan, Jr. On 17 August 2010, the pre-trial was terminated.

1821. Discussions are currently ongoing between the public and private prosecutors on how to efficiently synchronize the current evidence presented against Andal Ampatuan, Jr. with future evidence or witnesses to be presented against the 197 new accused.

1822. In another letter dated 18 October 2010, the Department of Justice reported that on 29 September 2010, the prosecution presented its tenth witness, Norodin Mauyag, to testify on his observations in Sitio Masalay, Barangay Salman, Ampatuan from 20 to 23 November 2009, and to identify the accused Ampatuans and members of the 1507 and 1508 Police Provincial Mobile Group (PPMG) involved in the killings. The next scheduled hearings of the case are on 20 and 27 October 2010.

Urgent appeal

1823. On 29 November 2010, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the killing of Mr. Benjamin Bayles, aged 43, a human rights advocate and church worker, and the alleged intimidation and harassment by members of the Philippine Army of witnesses related to the Bayles case, including Mr. Manuel Bayles, Mr. Benjamin Ramos and Ms. Vilma Espinosa Tejada, as well as the threats against two journalists reporting on the case, Mr. Larry Trinidad of Radio Mindanao Network, and Mr. Jaime Lim, a Bacolod-based journalist.

1824. According to information received, on 14 June 2010, Mr. Benjamin Bayles, from Sitio Pamandayan, Barangay Buenavista, Himamaylan City, Negros Occidental, was killed by two armed men riding a motorcycle. The Kabankalan City Philippine National Police set up a check point and arrested two persons in connection with the murder. Two .45 caliber pistols were recovered from the suspects. It is alleged that the two suspects are members of the 61st Infantry Battalion, Armed Forces of the Philippines (AFP).

1825. On 18 June 2010, the Chief of police of Himamaylan City received a complaint of murder against the suspects at the Office of the City Prosecutor of Himamaylan. On 5 July 2010, a criminal case was filed before the regional trial court.

1826. On 27 October 2010, a pre-trial conference was held and the names of the witnesses in the case were mentioned, including Mr. Manuel Bayles and Ms. Vilma Tejada. Later on the same day, at around 5.00 p.m., three army men dressed in military uniforms entered the house of Ms. Vilma Tejada at Sitio Pamandayan, Brgy, Buenavista, Himamaylan City. They woke her up and pointed the barrel of a high powered rifle (M16) at her. The soldiers interrogated Ms Tejada about the case of Mr. Bayles. They stayed at her house for approximately 30 minutes. On 4 November 2010, at around midnight, 12 armed men in military insignia entered the house of Ms. Tejada. They threatened that if she testified in the case she would be killed and attempted to take her with them but she refused.

1827. Mr. Manuel Bayles, who is a brother to the deceased and a complainant/witness in the case, has indicated that he is under military surveillance. He indicates that at least twice a week, two men riding a motorcycle, wearing army uniforms and helmets, have been seen stopping near his house. Army men had also been asking his neighbors about him.

1828. The mandate-holders were also informed that Mr. Benjamin Ramos, legal counsel for the Bayles family, is also under threat. Other witnesses in the Bayles case have also received death threats or are under military surveillance, as well as Mr. Larry Trinidad and Mr. Jaime Lim, two journalists who are linking the military to the killing.

1829. Information made available to the mandate-holders also indicates that there are concerns that the ballistic evidence in the case may have been tampered with.

1830. The mandate-holders welcomed the steps that the Government had undertaken to secure the arrest of the suspects related to the killing of Mr. Benjamin Bayles. While they did not wish to prejudge the accuracy of these allegations reported to them, they expressed their concern with regard to the allegations that members of the Philippine Army are harassing and intimidating witnesses related to the case, as well as journalists reporting on the case, and that ballistic evidence might be tampered with.

1831. Response from the Government to a communication sent before the reporting period

1832. In a letter dated 26 May 2010, the Government responded to the letter dated 8 October 2009 pertaining to the killings of Mr. Romulo Mendova and Father Cecilio Pelito Lucero from Northern Samar.

1833. Information obtained from the Philippine National Police (PNP) revealed that the case of Mr. Romulo Mendova was already filed at the Provincial Prosecutors Office, Basey, Western Samar for the crime of murder docketed under NPSVITT-09b-INV-09L-00125 against Rodrigo Rosas, alias “Decoy” and two (2) John Does last 04 December 2009. The case is presently undergoing preliminary investigation.

1834. On the killing of Father Cecilio Pelito Luccro, a case was already filed last 24 November 2009 at the Provincial Prosecutors Office, Northern Samar for the crime of murder docketed under IS No. VIII-II-INV-09K-00205 against Gerry Espera y Domasig, alias Tiyok, alias Mark Tonok, and four (4) John Does.

Response from the Government

1835. In a letter dated 22 March 2011, the Government submitted the following information from the Presidential Human Rights Committee of the Philippines based on investigations made by the Philippine National Police.

1836. A case of murder, Criminal Case No.2747 was filed against suspects on 5 July 2010 at the Regional Trial Court, Branch 55, in Himamaylan City, Negros Occidental.

1837. On the alleged harassment and intimidation of mediaman Larry Trinidad and Jaime Lim, both denied that there was such harassment, threat or intimidation against them relative to the case of Bayles.

1838. Police are still determining the whereabouts of Wilma Tejada, one of the witnesses in the killing of Benjamin Bayles, as she reportedly has relocated her residence to a mountainous area in Barangay Tooy, Himamaylan City.

1839. On the alleged harassment by the 61st Infantry Battalion of the Philippine Army, the report revealed that the said battalion was not in the area at the time of the crime’s commission since it was transferred to another location in Panay Island in August 2010 prior to the occurrence of the alleged harassment and intimidation.

Urgent appeal

1840. On 29 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning the situation of Mr. **Christopher Solano**, Mr. **Althea Villagonzalo**, Mr. **Whelgester Paglinawan**, and Mr. **Manuel Bentillo**. Mr. Solano, Mr. Villagonzalo, Mr. Paglinawan, and Mr. Bentillo are volunteers with Alliance for the Advancement of People’s Rights (KARAPATAN), an alliance of individuals, groups and organisations working for the promotion and protection of human rights in the Philippines. The aforementioned human rights defenders are also members of the human rights monitoring team in Sta. Catalina, Negros Oriental.

1841. According to the information received, since 14 February 2011, Messrs Solano, Villagonzalo, Paglinawan, and Bentillo have been based in the municipality of Sta. Catalina where they have been documenting alleged human rights violations in militarised communities in the region.

1842. It is alleged that on 17 March 2011, Messrs Solano, Villagonzalo, Paglinawan, and Bentillo travelled to the village of Barangay Nagbinlod, Sta. Catalina, in Negros Oriental in order to observe and document human rights violations allegedly carried out by the security forces, against members of the local community. It is alleged that there was a clash between the security forces and the New People’s Army (NPA).

1843. According to the information received, a group of local farmers informed the aforementioned human rights defenders that Mr. Marvin Villegas, a local resident, had

allegedly been shot by members of the 1st Scout Rangers Battalion of the Army while he was taking the family's cattle to the fields. It is reported that Messrs Solano, Villagonzalo, Paglinawan, and Bentillo along with local village residents were organising medical assistance for Mr. Villegas when members of the Alpha Company of the 79th Infantry Brigade of the Philippines Army approached them. It is reported that the aforementioned human rights defenders, along with the local residents were arrested, held by soldiers on the roadside and questioned. It is alleged that nine of the local residents were released, while the rest of the group, including the human rights defenders, was taken to a police station in the Sta. Catalina municipality.

1844. It is reported that while in detention, Messrs Solano, Villagonzalo, Paglinawan, and Bentillo were accused by soldiers of being members of the New People's Army. It was later alleged that Mr. Villegas and his mother were taken away by soldiers to Dumaguete City.

1845. Concern was expressed that Messrs Solano, Villagonzalo, Paglinawan, and Bentillo were arrested and detained by members of the security forces while attempting to seek medical assistance for a villager who had allegedly been shot by the security forces. Further concern was expressed that, considering the aforementioned human rights defenders were arrested during the course of their work, their arrests and detention may be linked to their legitimate human rights work, in particular the documentation of alleged human rights violations carried out by the security forces.

Response from the Government

1846. In a letter dated 6 April 2011, the Government acknowledged receipt of the communication sent on 29 March 2011 and informed that the communication has been forwarded to concerned authorities in the Philippines and will advise the Office of the High Commissioner for Human Rights as soon as information is received.

Observations

1847. The Special Rapporteur thanks the Government for its responses to the communications sent during the reporting period, and looks forward to receiving a substantive reply to the communication sent on 29 March 2011, and to an earlier communication sent on 13 July 2009.

1848. The Special Rapporteur remains seriously concerned regarding the persistent challenges faced by journalists and human rights defenders in the Philippines, including extrajudicial killing, threats and intimidation, arbitrary arrest and detention, and illegitimate restrictions to the right of freedoms of opinion and expression, peaceful assembly and association. He urges the Government of the Philippines to conduct thorough investigations in each case and prosecute the perpetrators. This is crucial in order to create a safe environment conducive to the work of journalists and human rights defenders.

Qatar

Urgent appeal

1849. On 11 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Chair-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the detention by State Security of Mr. **Sultan al-Khalaifi** and other human rights defenders who have allegedly been arrested and detained in the past few days. Mr. Sultan al-Khalaifi is a blogger and founder of a human rights organization which campaigns primarily on cases of detention in the State of Qatar and is registered in Switzerland.

1850. According to information received, in the evening of 2 March 2011, Mr. Sultan al-Khalaifi was allegedly arrested as he was leaving his parents' home in Doha by around eight individuals in plain clothes, believed to be members of State Security forces. He was reportedly taken to his own home, which they searched for approximately three hours, during which they seized CDs and a laptop. His family car was also searched. Mr. Sultan al-Khalaifi was then allegedly taken by force by these individuals, and his current fate and whereabouts are unknown, although it is believed that he is being held in the custody of State Security. Mr. Sultan al-Khalaifi had reportedly informed his wife earlier that day that State Security officials had contacted him, asking him to report to them, but that he did not know why. His latest blog entry reportedly contained critical comments regarding censorship of books in the State of Qatar.

1851. Additionally, other human rights defenders have also been allegedly arrested and detained recently in the State of Qatar.

1852. Concerns were expressed that Mr. Sultan al-Khalaifi's detention by State Security places him at increased risk of torture or other ill-treatment, and that he has been detained as a result of his legitimate work as a blogger and human rights defender, and for exercising his right to freedom of opinion and expression. Further concern was expressed regarding the reports that other human rights defenders have also been detained in recent days.

Response from the Government

1853. In a letter dated 29 March 2011, the Government assured the Special Rapporteurs that it considers the communication sent on 11 March 2011 seriously, and that it will respond as soon as relevant information and data is received from the competent authorities.

Observations

1854. The Special Rapporteur thanks the Government for the acknowledgement of receipt of his communication sent on 11 March 2011 and looks forward to receiving a substantive reply as soon as possible addressing his concerns.

Republic of Korea

Allegation letter

1855. On 1 July 2010, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights defenders, sent an allegation letter concerning **threats and investigations initiated against the staff of the People's Solidarity for Participatory Democracy (PSPD)**, a non-governmental organization in consultative status with the United Nations Economic and Social Council.

1856. According to information received, on 11 June 2010, the PSPD transmitted an open-letter, together with its 27-page report, to the Permanent Missions of the 15 Member States of the United Nations Security Council in New York. The report questioned the results of the investigation by the Joint Civilian-Military Investigation Group (JIG), which concluded that the Democratic People's Republic of Korea (DPRK) was responsible for launching a torpedo attack against the Republic of Korea's "Cheonan" naval vessel on 26 March 2010 that killed 46 navy personnel. The report also urged the Governments of the Republic of Korea and the DPRK to refrain from any provocative action which may threaten the peace on the Korean peninsula, and requested the Government of the Republic of Korea to re-investigate the incident and to disclose all available information to the public.

1857. Since 14 June 2010, a number of statements have allegedly been made by high-level Government officials, including the President, the Prime Minister, and the Minister of Foreign Affairs and Trade, which have depicted the PSPD as hindering the Government's diplomatic efforts to push for action by the Security Council to hold the DPRK accountable for the incident. Such statements have allegedly incited members of the public to verbally and physically attack the PSPD and its staff, including threatening telephone calls and throwing of gas canisters and eggs at the building in which the PSPD office is located.

1858. On 16 June 2010, the Seoul Central District Prosecutor's Office reportedly initiated an investigation on the PSPD on charges of benefitting the enemy (the DPRK) in violation of the National Security Law, defaming the members of the JIG by spreading false information, and interfering in the official duties of the Government's diplomatic affairs. It has also been reported that Mr. Lee Tae-ho and Mr. Ko Gap-woo, PSPD staff who were involved in the compilation and submission of the letter and report to the Security Council Member States, are to be summoned for further investigation.

1859. Concern was expressed that the threats against and investigations of the PSPD staff are related to the peaceful exercise of their right to freedom of opinion and expression, which includes the right to impart information and ideas of all kinds regardless of frontiers.

Response from the Government

1860. In a letter dated 15 September 2010, the Government informed that it is untrue that the Prosecutor's Office (hereinafter "PO") initiated an investigation as to whether the act of sending a letter to the United Nations Security Council by the People's Solidarity for Participatory Democracy (hereinafter "PSPD") can constitute a crime of benefitting the enemy, defamation, or obstruction of public duties. The PO is conducting a preliminary inquiry, not a criminal investigation, pursuant to its receipt of a petition requesting an investigation of the PSPD activists, as is further explained below. Additionally, it is baseless and presumptuous to allege that the comments made by high-level government officials on the PSPD's decision to send a letter to the UN Security Council have provoked verbal and physical attacks by conservative groups against the PSPD.

1861. On 11 June 2010, several civic organizations including RIGHT KOREA lodged a petition with the PO demanding that the PSPD be prosecuted for sending a letter to the 15 members of the United Nations Security Council in which it questioned the results of the investigation by the Joint Civilian-Military Investigation Group (JIG) of the sinking of the naval vessel Cheonan. The PO thereafter initiated a preliminary inquiry in accordance with Section 141(1) of the Regulation of Prosecutorial Affairs (Regulation of the Ministry of Justice). Currently, the PO is conducting a review of the case to determine whether or not the facts alleged in the petition are accurate and whether the petition has legal merit. If the review results in an affirmative answer on both counts, the PO will launch a criminal investigation in accordance with the Regulation of Prosecutorial Affairs, Section 143. Otherwise, the PO will discontinue the preliminary inquiry. Thus far, no competent Korean governmental authority has expressed its opinion on whether or not the government will prosecute the PSPD and whether or not the PSPD violated the law.

1862. Upon the PSPD's request, police officers were deployed to protect the PSPD during the civic group demonstrations that took place around the PSPD building from 15 to 18 June 2010. Moreover, a team of 5 officers remained to protect the PSPD's staff and its facility for an additional 3 weeks. Additionally, the police referred this case to the PO on 22 July for a decision on whether the demonstrations by 5 civic groups that took place from 15 to 18 June in front of the PSPD's building constitute a violation of the Assembly and Demonstration Act. The police are also currently working to identify a person suspected of

engaging in violence against the PSPD staff and its facilities. Once the suspect's identity is verified, he will be charged in accordance with the law.

Allegation letter

1863. On 23 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an allegation letter concerning the situation of Messrs **Rae-gun Park** and **Jong-hoe Lee**, activists of Justice for Yongsan Evictees.

1864. According to the information received, on 24 January 2011, Mr. Rae-gun Park and Mr. Jong-hoe Lee received a three-year and one month jail sentence, and a two-year jail sentence respectively for their roles in creating a campaign calling for justice and reparations for the families of those who died in what became known as the Yongsan Fire Incident. However, both sentences are put on hold for four years and three years respectively, and an appeal is currently pending.

1865. As background to this sentence, in order to protest against forced eviction from a building scheduled for demolition as part of "New Town" re-development project of the City of Seoul, a group of people had barricaded themselves in the building. On 20 January 2009, the police then attempted to forcibly evict protesters from the building in question. During the eviction, a fire broke out and took the lives of five protestors and a police personal.

1866. Following the incident, Mr. Park, Mr. Lee and other activists allegedly accused the police for the incident, as they believed that the death and injuries were predictable at the time of eviction, given that the police reportedly did not take any precautionary measures.

1867. Mr. Park and Mr. Lee, along with other activists, publicly demanded an official apology, adequate compensation to victims and a thorough and impartial investigation into events that claimed six lives.

1868. In addition, according to the information received, Messrs Park and Lee, are also convicted for violation of the Assembly and Demonstration Act as well as general obstruction of traffic ordinance, following a series of assemblies which were carried on without police permission for about two months from 23 January 2009 to 7 March 2009. They had submitted the required notification to the responsible police station for holding an assembly, but it was turned down five times by the police. They are currently waiting further sentencing, pending a second trial.

1869. Concerns were expressed that the aforementioned sentencing of Messrs Park and Lee may be related to their human rights activities, in the exercise of their right to freedom of opinion and expression. Further concerns were expressed concerning their conviction for violation of the Assembly and Demonstration Act.

Observations

1870. The Special Rapporteur thanks the Government for the reply to his communication of 1 July 2010, but regrets that at the time of the finalization of this report, the Government had not transmitted a reply to his communications sent on 23 March 2011. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

1871. The Special Rapporteur reiterates his appreciation to the Government of the Republic of Korea for the invitation to undertake a mission in May 2010, and looks forward to the implementation of his recommendations contained in A/HRC/17/27/Add.2.

Republic of Moldova

Urgent appeal

1872. On 24 September 2010, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding Mr. **Ion Guzun**, project coordinator with the Moldovan Institute for Human Rights (IDOM) and other members of **IDOM**. IDOM is one of the foremost non-governmental human rights organizations in Moldova. It was very active in documenting abuses in the April 2009 events, and presented detailed evidence in this regard to the UN Committee Against Torture in November 2009. He has been among the groups pressing most strongly for accountability for members of the previous Government involved in human rights abuses.

1873. According to the information received, on 30 August 2010, Mr. Ion Guzun received a threatening text message on his mobile phone with the following message: “don’t try to climb too high, you will fall down and...”. On 1 September 2010, Mr. Guzun filed a complaint regarding these threats with the General Prosecutor’s Office and with the Intelligence and Security Services (SIS).

1874. In April 2010, the website of IDOM was hacked twice and threatening messages were posted on it.

1875. It is believed that the recent threats received by Mr. Guzun, as well as the hacking of the website of IDOM may be related to the organization’s activities in seeking accountability for members of the previous Government involved in human rights abuses related to the April 2009 events, as well as IDOM’s motion before the Chisinau Court of Appeal to cancel the decision of the Supreme Council of Magistracy dismissing the Chairman of the Supreme Court of Justice.

1876. Concern was expressed for the physical and psychological integrity of Mr. Ion Guzun and other staff members of IDOM.

Response from the Government

1877. In a letter dated 22 November 2010, the Government indicated that in order to clarify the case and its circumstances brought to the Moldovan Government’s attention by the Special Rapporteurs, appropriate requests were sent to the national competent authorities.

1878. In fact, with the reference to complaint of Mr. Ion Guzun and other staff members of IDOM, the Information and Security Service of the Republic of Moldova confirmed the reception of three complaints from 7 and 19 April 2010 and from 1 September 2010, investigated the allegations exposed in these complaints and, accordingly to the legal procedures and the functional competences, the case was sent to the Ministry of Domestic Affairs with, respective information of the IDOM.

1879. On 2 September 2010, the petitioner submitted to the Office of the General Prosecutor a similar request about receiving threats on the mobile. The allegations were investigated in accordance with the provisions of the Penal Procedure Code (PPC) of the Republic of Moldova. Following the investigations of the allegations was established that the real facts do not meet the elements of an infringement. In this context, on 15 September 2010, according to the article 275 (3) PPC RM was emitted an ordinance on refusing to open a criminal file.

1880. On the basis of the mentioned above ordinance the Office of the General Prosecutor, as well as the Ministry of Domestic Affairs did not start another investigation procedure. Mr. Ion Guzun and other staff members of IDOM were informed about the refusal to open a criminal file.

1881. At the same time, the competent authorities reaffirmed the necessity to make efforts, including legislative measures, in order to exclude similar situations.

Urgent appeal

1882. On 22 November 2010, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on trafficking in persons, especially women and children, sent an urgent appeal regarding the situation of **Ms. Alina Radu**, an award-winning investigative journalist and director of the independent investigative newspaper *Ziarul de Garda* (*The Guard* newspaper). Ms. Radu is a member of the board of the International Association for Women in Radio and Television (IAWRT), the Moldovan Association of Independent TV Journalists and the South East European Media Organisation. Over the past few years, Ms. Radu has been investigating various affairs in the fields of corruption, human trafficking, smuggling and human rights abuses in Moldova.

1883. According to the information received, on 18 September 2010, a prosecuting officer of the Chisinau Police contacted Ms. Alina Radu in order to inform her that a request for prosecution against her was submitted. Reportedly, the request had been submitted by an individual whose name was revealed by Ms. Radu in a series of newspaper articles entitled "Jail in the brothel" as a person accused of trafficking 17 young women.

1884. According to the information received, on 21 September 2010, Ms. Radu received a summons informing her that she should go to the Criminal Investigation Department for a hearing concerning the complaint filed against her. Reportedly, on 24 September 2010, Ms. Radu and her lawyer Mr. Victor Pantaru, went to the Criminal Investigation department where Ms. Radu was interrogated. She was told by police that a criminal file against her would be opened.

1885. It has been reported that over the past few months, Ms. Radu has been receiving threats, including death threats, from people accused of trafficking in human beings.

1886. Concern was expressed that the threats and actual complaint filed against Ms. Alina Radu might be connected to her legitimate activities as an investigative journalist and human rights defender, in particular with her work documenting instances of human trafficking in the country.

Response from the Government

1887. In a letter dated 3 January 2011, the Government informed that the Police Station of the Centre Sector of the Chisinau Municipality registered the claim of Mr. Victor Sorocovici who, in accordance with article 170 of the Criminal Code (Slander), submitted a complaint against Ms. Alina Radu, the author of a Series of newspaper articles entitled "Jail in the brothel".

1888. At the same time, Mr. Sorocovici sent a similar complaint to the lawyer and a close relative of Ms. Radu.

1889. Following investigations in the case, Mr. Sorocovici was charged with human trafficking related to the recruitment, transportation and concealment of a person for commercial sexual exploitation, committed by deception (art. 165 Criminal Code), and he is wanted at the national and international levels.

1890. The investigation of the claim made against Ms. Radu established that the real facts do not meet the elements of a crime, and therefore an ordinance on non-initiating a criminal investigation was issued.

1891. The file was also sent to the Prosecutor Office of the Municipality of Chisinau which, in accordance with the art. 275(1) of the Criminal Code, refused to initiate a criminal investigation.

1892. Due to the fact that art. 170 Criminal Code (Slander) was abrogated, but is still a contravention (art. 70 Contravention Code), the police office was obliged to examine the complaint. Therefore the summons of Ms. Alina Radu was in compliance with legal provisions. In addition, Ms. Alina Raclu did not send a complaint to national legal authorities about the threats, including death threats, that she received from people accused of trafficking human beings.

1893. The legal authorities continue to investigate the cases, which have been noticed by Ms. Radu, in order to arrest and prosecute the perpetrators in accordance with the appropriate national laws.

Responses received to communications sent earlier

1894. In a letter dated 29 June 2010, the Government replied to the communication sent earlier on 22 December 2009 regarding Ms. **Tatiana Etco** and Mr. **Victor Mosneag**, journalists working at the weekly newspaper “*Ziarul de Garda (ZDG)*”, as follows.

1895. The competent authorities of the Republic of Moldova have been examining the case regarding the journalists working at the weekly newspaper “*Ziarul de Garda*” (ZDG), nominally Mrs. Tatiana Etco and Mr. Victor Mosneag. In the period of 26 November – 10 December 2009 the above mentioned journalists published a series of articles entitled “Train of corruption from railway station Chisinau”.

1896. After those publications Mrs. Tatiana Etco and Mr. Victor Mosneag deposited a complaint which has been registered on 20 January 2010. In this context, the Ministry of Internal Affairs started to verify all the circumstances indicated by the journalists, inclusively oriented for the insurance of their security and identification of the persons which was placing the information on the Internet.

1897. At the same time, the investigations has taken into account the national and international legislation, as well as Article 10 of the European Convention for the protection of human rights and fundamental freedoms and Article 32 of the Constitution of the Republic of Moldova, according to which all citizens are guaranteed the freedom of opinion, as well as the freedom of publicly expressing their thoughts and opinions by any way of word, image or any other means possible.

1898. After the investigative measures, suspected persons weren’t identified, and the necessary information according to the stipulations of the Criminal Procedure Code has been sent to Prosecutor Office of the Central sector, mun Chisinau.

1899. In this regard, Prosecutor Office has delivered a decision/ordinance with the refuse to initiate a criminal pursuance, in the base of the fact that electronic messages, formally, doesn’t contain direct threat which will present real risk, and respectively absence of the constitutive elements of the offence components (article 155 Criminal Code of the Republic of Moldova – threatening murder or severe bodily injury or damage to health).

1900. Nevertheless, the Moldovan authorities remain fully confident on the implementation of the international commitments assumed in the field of protection of the human rights and fundamental freedoms, freedom of opinion and expression.

Observations

1901. The Special Rapporteur thanks the Government for its reply.

Russian Federation

Allegation letter

1902. On 3 August 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegations concerning the safety of **Mr. Magomed Hanmagomedov**, investigative journalist working for Chernovik weekly newspaper in Dagestan.

1903. According to information received, on 9 July 2010, Mr. Magomed Hanmagomedov published an article regarding an operation by law enforcement officials of Dagestan which took place in the town of Derbent on 16 June 2010, during which four suspected armed fighters were killed. In his article, Mr. Magomed Hanmagomedov questioned the official version of the event provided by the Ministry of Internal Affairs, which claimed that the four men in the car refused to stop and opened fire at the police. Instead, he suggested that the men in the car were led into an ambush and gunned down, and that individuals other than the suspected fighters may also have been present in the car. He also noted in his article that two of the names of the individuals killed were initially reported wrongly by the police.

1904. Alongside his article, Mr. Magomed Hanmagomedov posted a video clip on the newspaper's website, which was allegedly recorded on a mobile phone by law enforcement officials during the operation. The video captures a voice pleading not to shoot, followed by a number of shots, after which the voice ceases.

1905. Following the publication of his article and the video clip, Mr. Magomed Hanmagomedov has allegedly received phone calls from law enforcement officials expressing indignation at his article, and a number of text messages from unknown numbers alleging that he is receiving funds from abroad and working for militants. It has also been reported that the local prosecutor's office may be preparing a criminal case against Mr. Magomed Hanmagomedov.

Response from the Government

1906. In a letter dated 20 December 2010, the Government responded to the communication sent on 3 August 2010 as follows.

1907. According to available information, internal affairs agency officers attempted to stop a passenger vehicle in Derbent, Republic of Dagestan, in the course of investigative work there on 16 June 2010. In response, unidentified persons in the vehicle opened fire with the intent to kill. Five militia officers sustained gunshot wounds of varying severity as a result. Four criminals were killed in the exchange of fire.

1908. The Derbent interdistrict investigating agency of the investigation department for the Republic of Dagestan, a unit of the Investigative Committee attached to the Office of the Procurator of the Russian Federation, initiated criminal proceedings on 16 June 2010 in connection with this incident for offences under article 317 (attempt on the life of a law enforcement officer) and article 222, paragraphs 1 and 2 (unlawful acquisition, transfer, sale, storage, transport or carriage of weapons), of the Criminal Code.

1909. The preliminary investigation established that the persons killed in the exchange of fire were members or accomplices of unlawful armed groups.

1910. Mr. Hanmagomedov's account in Chernovik of the killing of civilians during the events of 16 June 2010, published on 9 July 2010, is not borne out by the facts. Mr. Hanmagomedov was not interrogated during the investigation of this matter, nor were any criminal proceedings brought against him. No complaints about him being persecuted or appeals for safety measures to be taken were received. The allegation concerning a criminal

prosecution of Mr. Hanmagomedov in connection with the above-mentioned publication is groundless.

Allegation letter

1911. On 19 October 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders, sent a letter of allegations regarding the situation of **Mr. Aleksei Sokolov**. Mr. Sokolov is the Head of "Pravovaya Osnova" (Legal Basis), an organization which campaigns against torture and other ill-treatment of people held in the Russian Federation's places of detention, and a member of the civic supervisory committee on places of detention appointed by the Russian Federation Parliament.

1912. Mr. Sokolov has been in detention since May 2009 facing various charges and different judicial processes. Mr. Sokolov was the subject of a communication sent to the Government on 25 August 2009 by the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Special Rapporteurs acknowledged the reply received from the Government on 19 November 2009.

1913. According to the information received, on 18 August 2010, Mr. Sokolov was sentenced on appeal by the Regional Court of Sverdlovsk to three years' imprisonment in a high security colony. He will serve one year and a half, due to his previous detention on remand. Reportedly, Mr. Sokolov intends to lodge a second appeal. According to the information received, the documents manually drafted by Mr. Sokolov in preparation of the discussions with his lawyer have been consistently confiscated by the prison guards, therefore obstructing his right to defend himself.

1914. Mr. Sokolov was originally arrested on 13 May 2009 in relation to a robbery in 2004. On 14 May 2009, the Verkh-Isetsy court in Yekaterinburg authorized Mr. Sokolov's arrest for a period of ten days. However, he was subsequently held in detention until 31 July 2009 when the court ruled to overturn the decision to remand him in custody. New charges of robbery under Article 162, Part 4 of the Criminal Code were filed on 31 July 2009, the same day that Mr. Sokolov was released from detention by the Sverdlovsk regional court. On 13 May 2010, Sverdlovsk regional court found Mr. Sokolov guilty of the robbery and he was sentenced to five years in prison. On 18 August 2010, during the first court appeal, Mr. Sokolov's had his sentence reduced from five to three years.

1915. On 25 August 2010, the family and legal representatives of Mr. Sokolov were informed that, at the decision of the Russian Prison Service, he had been transferred from Yekaterinburg to Krasnoyarsk, more than 2,000 kilometers away from where his family lives. Moreover, allegations received indicate that Mr. Sokolov was beaten by the police during the transfer from Yekaterinburg to Krasnoyarsk while he was detained at the FGU IZ-54/1 Remand Center in Novosibirsk (Western Siberia). Reportedly, on 30 August 2010, the Prosecutor's office confirmed the illegal use of physical force against Mr. Sokolov confirming the use of a special device "PR-73 (baton)" by the prison authorities on Mr. Sokolov. This transfer will make it more difficult for Mr. Sokolov to communicate with his family and lawyers.

1916. According to the reports received, since January 2010, Mr. Sokolov has suffered repeated attacks by his cell mates. On 17 January 2010, at the Kamychlov detention centre, Mr. Sokolov was assaulted by his cell mate who threw boiling water at him before attacking him. Officials reportedly witnessed the scene without intervening. One of them

finally entered the cell, and shouted to his colleagues: “Sokolov attacked a co-detainee and is beating another one”. Following this assault, on 18 January 2010, Mr. Alexei Sokolov was reportedly transferred to the Soukhoi Log detention centre, where he was assaulted by his new cell mate, who hit him in the jaw and threatened him as follows: “We already warned you but you still don’t understand”. This cell mate is allegedly one of those responsible for the re-opening of the investigation against Mr. Sokolov on 23 April 2009. The various petitions for provisional release of Mr. Sokolov lodged throughout the process have been reportedly rejected by the court.

1917. Concern was expressed about the physical and mental integrity of Mr. Sokolov and about allegations indicating that his situation and the various judicial processes against him may be related to his activities as a human rights defender, more specifically his work against torture and ill-treatment including monitoring places of detention. Serious concern was expressed about the allegations received indicating that Mr. Sokolov was beaten by prison guards at the Novosibirsk Remand Center during his transfer to the Krasnoyarsk region. Moreover, concern is also expressed about allegations that Mr. Sokolov has been subjected to acts of violence and harassment by various cell mates and that the respective prison officials did not intervene. Finally, concern was expressed about information received indicating that Mr. Sokolov will serve his sentence in the Krasnoyarsk region of Siberia, more than 2,000 kilometers away from Yekaterineburg, where his family lives.

Response from the Government

1918. In a letter dated 21 February 2011, the Government replied to the communication sent on 19 October 2010 as follows.

1919. Mr. Sokolov was sentenced by the Bogdanovich City Court of Sverdlovsk province on 13 May 2010 to 5 years’ deprivation of liberty to be served in a strict regime correctional colony under article 158 (Theft), paragraph 3 (c), article 161 (Robbery), paragraph 3 (a), and article 69 (Sentencing for multiple offences), paragraph 3, of the Criminal Code of the Russian Federation. The sentence against Mr. Sokolov was commuted on 18 August 2010 to 3 years’ deprivation of liberty, to be served in a strict regime colony, by decision of the Sverdlovsk provincial court criminal chamber, whereby he was sentenced under article 158, paragraph 3, of the Criminal Code, with the application of article 64, article 161, paragraphs 2 (a), 2 (c), 2 (d) and 2 (e), and article 69, paragraph 3, of the Criminal Code.

1920. The sentence took legal effect. Mr. Sokolov did not appeal his sentence. As the case file shows, Mr. Sokolov was convicted of acts unrelated to human rights work.

1921. Mr. Sokolov was detained during the preliminary investigation and judicial proceedings in remand centres FBU IZ No. 66/1 and FBU IZ No. 66/4 of the Central Department of the Federal Penal Correction Service for Sverdlovsk province.

1922. Between 17 and 18 January 2010, when Mr. Sokolov was in remand centre No. 66/4, he had clashes with accused persons A.E. Golovin and E.G. Belyash because of personal differences, in the course of which Mr. Sokolov sustained bodily injuries that did not endanger his health.

1923. The internal affairs office for the Kamyshlov municipal area of Sverdlovsk province held an inquiry into the case in accordance with articles 144 and 145 of the Code of Criminal Procedure of the Russian Federation and decided to take no further action on the basis of article 24, paragraph 1 (2), of the Code. Mr. Sokolov did not appeal against these decisions.

1924. Meanwhile, the procurator’s office of Sverdlovsk province issued a procuratorial recommendation to the head of the Central Department of the Federal Penal Correction

Service for Sverdlovsk province. Pursuant to a review of the recommendation, officials of the institution, including the head of remand centre No. 66/4, were prosecuted for professional misconduct.

1925. No evidence was found of a violation of Mr. Sokolov's right to submit proposals, applications and complaints during his detention in the remand centres of the Central Department of the Federal Penal Correction Service. Mr. Sokolov had the opportunity to file complaints with the authorities, the procurator's office and the court and was able to do so. His applications were received by the administration of the remand centres without hindrance and sent on to the addressees. Nor was evidence obtained in the course of inquiries held of the confiscation from him of documents or notes pertaining to the criminal case. No violation of any kind was established of Mr. Sokolov's right to meet with a lawyer or other persons for legal assistance.

1926. Indeed, Mr. Sokolov met with his defence counsels and lawyers on 126 occasions between 14 August 2009 and 20 August 2010. Furthermore, between 6 October 2009 and 22 November 2010, he himself personally drafted and sent 20 letters to various authorities, including the Human Rights Commissioner of Sverdlovsk province, the Public Monitoring Commission of Sverdlovsk province, the procurator's office responsible for monitoring compliance with the law in correctional institutions and various judicial bodies.

1927. The Office of the Procurator-General held an inquiry into Mr. Sokolov's situation in April 2010, including a visit to Sverdlovsk province, in response to a letter submitted by the Moscow Helsinki Group Chairperson Mr. L.M. Alekseev. Mr. Sokolov explained in a statement that he did not have a complaint about the detention conditions in remand centres No. 66/1 or No. 66/4.

1928. On the basis of a court judgement and by order of the Russian Federal Penal Correction Service, Mr. Sokolov was transferred from the Central Department of the Federal Penal Correction Service for Sverdlovsk province on 25 August 2010 in order to ensure his personal safety, in accordance with article 81 of the Penal Enforcement Code, to serve his sentence of deprivation of liberty at the Central Department in Krasnoyarsk territory. The inquiry indicated that Mr. Sokolov's life might be threatened, and it was not possible to ensure the prisoner's safety without transferring him to a correctional institution in another region.

1929. Mr. Sokolov arrived at remand centre FBU IZ No. 54/1 of the Central Department of the Federal Penal Correction Service for Novosibirsk province on 27 August 2010, for subsequent transfer to the Central Department of the Service for Krasnoyarsk territory, where he was put in a one-person cell to protect his life and health. On 30 August 2010, during the daily rounds of the institution, Mr. Sokolov refused to comply with the legitimate demands of the officers at remand centre No. 54/1 that he leave his cell for a search of his person; he insulted officials with obscene and abusive language and physically resisted them. In these circumstances, force was used against the prisoner to suppress his unlawful actions.

1930. An inquiry into the use of force was conducted by the Dzerzhinsky interdistrict investigating agency, a unit of the investigation department for Novosibirsk province working under the Investigative Committee attached to the Office of the Procurator of the Russian Federation. The outcome of the inquiry established that an officer of remand centre No. 54/1 of the Central Department of the Federal Penal Correction Service for Novosibirsk province used force against Mr. Sokolov in accordance with the law of the Russian Federation. A decision not to prosecute the officer was taken in this case on the basis of article 24, paragraph 1 (2), of the Code of Criminal Procedure for lack of evidence of an offence under article 286 (Exceeding official authority), paragraph 3 (a).

1931. A medical examination performed on Mr. Sokolov when he entered remand centre No. 24/1 of the Central Department of the Federal Penal Correction Service for Krasnoyarsk territory on 5 September 2010 revealed that he had sustained bodily injury in the circumstances described above at the remand centre in Novosibirsk.

1932. The administration of remand centre No. 24/1 sent evidence of the bodily injury sustained by Mr. Sokolov to the director of remand centre No. 54/1, in Novosibirsk, for decision. The fact that this was done in violation of the legislation on criminal procedure prompted the procurator's office of Krasnoyarsk territory to take action, ordering the director of remand centre No. 24/1 to desist from activity not in compliance with the law.

1933. No unlawful coercive measures or special restraining devices were used while Mr. Sokolov was in institutions of the Krasnoyarsk territory correctional system.

1934. Mr. Sokolov's conditions of detention in these institutions are in compliance with the penal enforcement legislation of the Russian Federation.

1935. The Russian Federation notes that a review of Mr. Sokolov's situation does not fall under the mandate of the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, or the Working Group on Arbitrary Detention. In fact, Mr. Sokolov was convicted on criminal charges, entirely unrelated to human rights work, of theft and robbery; no evidence was found in this case of a violation of Mr. Sokolov's right to freely express his opinion. Mr. Sokolov was detained in accordance with the law on the basis of evidence and testimony. Therefore, this case is in no way a matter of arbitrary detention. The Russian Federation calls on the special procedures in question to review information submitted to them carefully and, in future, to follow more closely the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council, and specifically article 3, subparagraph (a) and (d).

Urgent appeal

1936. On 3 December 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal concerning the ongoing judicial harassment of **Mr. Oleg Orlov**, Chairman of human rights organisation Memorial. Mr. Orlov was the subject of an allegation letter sent by the Special Representative of the Secretary-General on the situation of human rights defenders; the Special Rapporteur on the question of torture, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 29 November 2007. Mr. Orlov was awarded the European Parliament's Sakharov Prize on 16 December 2009.

1937. According to the information received, Mr. Oleg Orlov has been subjected to ongoing criminal proceedings and judicial harassment following remarks he made concerning the President of the Chechen Republic, Mr. Ramzan Kadyrov, in July of 2009.

1938. On 6 October 2009, the Tverskoy District Court of Moscow found Mr. Orlov guilty of libel, following the publication of a statement in which Mr. Orlov indicated his belief that Mr. Kadyrov or his administration was responsible for the murder of Ms. Natalia Estemirova, the head of Memorial's office in Grozny, on 15 July 2009. Mr. Kadyrov subsequently lodged an administrative complaint against Mr. Orlov, claiming that the statement had damaged the "honour and dignity" of the President of the Chechen Republic, and demanding ten million rubles in damages. Having been found guilty, it is reported that Mr. Orlov was ordered to retract the statement and pay a personal fine of 20,000 rubles. Memorial was also ordered to pay a fine of 50,000 rubles. The sentence was upheld on appeal by Moscow City Court on 21 January 2010.

1939. Furthermore, a criminal investigation concerning the same comments was opened on 20 October 2010. Despite reports that Mr. Kadyrov had publicly stated on 9 February 2010 that he would dismiss the criminal proceedings, on 18 June 2010, Mr. Orlov was informed that the charges against him remained pending, and summoned to appear before the Investigatory Department of the Department of Internal Affairs of the Central Administrative District of the City of Moscow on 6 July 2010 for further investigation. Mr. Orlov was subsequently charged with the criminal offence of libel under Article 29 parts 2 and 3 of the Criminal Code of the Russian Federation, and subjected to questioning.

1940. In the subsequent trial hearing of 13 September 2010, serious concerns were reportedly expressed regarding criminal procedure, specifically with respect to Article 72 of the Russian Federation's Code of Criminal Procedure, as it was alleged that Mr. Kadyrov's lawyer had been interrogated as a witness during pre-trial investigation. Citing these concerns and others, on 22 October 2010, the European Parliament called upon the authorities of the Russian Federation to reconsider the decision to open the criminal trial.

1941. In the trial hearing of 25 November 2010, which took place before District Court No. 363 of Khamovniki district, Moscow, the first defence witnesses were examined. The next hearing is reported to be scheduled for 16 December 2010.

1942. Concern was expressed that the ongoing criminal proceedings against Mr. Oleg Orlov may be related to legitimate and peaceful work in defence of human rights, in particular his remarks made about the President, as well as that of the human rights organisation Memorial. These acts, if confirmed, would take place in a context of increasing harassment of and violence against human rights defenders in the Russian Federation.

Response from the Government

1943. In a letter dated 21 February 2011, the Government replied to the communication sent on 3 December 2010 as follows.

1944. On 13 August 2009, the Tverskoy District Court of the City of Moscow began its examination of a complaint by Mr. Ramzan Akhmatovich Kadyrov, President of the Chechen Republic, against the interregional non-governmental organization and human rights centre Memorial and the chair of its board, Mr. Oleg Petrovich Orlov, in which Mr. Kadyrov claimed that his honour, dignity and reputation had been damaged, demanding 5 million roubles from each of the respondents in compensation for moral harm and the retraction of the libellous statements made against him in the mass media.

1945. The Court's decision of 6 October 2009 gave partial satisfaction to those demands.

1946. Thus, Mr. Kadyrov's claim was partially satisfied. The Court decided:

- To accept that the statements made on the website www.memo.ru were false and damaging to the honour, dignity and reputation of Mr. R.A. Kadyrov;
- To order Memorial to publish a retraction of the statements made on the aforementioned website within 10 days of entry of the Court's decision into force;
- To order Memorial to pay Mr. R.A. Kadyrov 50,000 roubles in compensation for moral harm;
- To order Mr. O.P. Orlov, Chair of the board of Memorial, to pay Mr. R.A. Kadyrov 20,000 roubles in compensation for moral harm;

1947. The dispute was settled by the court in accordance with civil procedure. On 21 January 2010, the civil chamber of Moscow City Court upheld the decision.

1948. As the result of a pretrial investigation, criminal proceedings were initiated against Mr. Orlov for the offence of libel on 20 October 2009. Mr. Orlov was charged with that offence under article 129, paragraph 3, of the Criminal Code (the case consequently being subject to a public hearing).

1949. The charges against Mr. Orlov are that, as Chair of Memorial, he accused Mr. Kadyrov, President of the Chechen Republic, of the murder of Ms. N. K. Estemirova, Mr. Orlov's colleague at Memorial, and in so doing disseminated information that he knew to be false and that was damaging to the honour, dignity and reputation of Mr. Kadyrov.

1950. On 28 July 2010, the deputy prosecutor for the Central Administrative District of the City of Moscow confirmed the indictment and the case was referred to the court.

1951. The injured party, Mr. Kadyrov, maintained the charges against Mr. Orlov.

1952. On 12 August 2010, the criminal case against Mr. Orlov came before a justice of the peace of District Court No. 363 of the Khamovniki District of the city of Moscow for trial on the merits.

1953. On 17 August 2010, the justice of the peace issued a decision to schedule the trial hearing for 30 August 2010.

1954. On 30 August 2010, the trial hearing was adjourned until 13 September 2010 as a result of the failure of Mr. Orlov to appear.

1955. On 13 September 2010 (not 13 October 2010, as indicated in the appeal of the special rapporteurs), in accordance with article 72 of the Code of Criminal Procedure, lawyer Mr. G.M. Reznik filed an objection against the injured party's representative, Mr. A.A. Krasnenkov, in connection with the latter's having been questioned as a witness during the pretrial inquiry, purportedly "in accordance with the procedure for questioning a witness". The justice of the peace dismissed the objection on the grounds that during the pretrial investigation, Mr. Krasnenkov had been questioned not as a witness but as a representative of the injured party.

1956. In accordance with article 42 of the Code of Criminal Procedure, the injured party and his or her representative may be questioned both during the pretrial investigation and during the trial.

1957. During the trial hearing, witnesses Ms. A.A. Malsagova, Mr. U.S. Dzhumaliev and Mr. O.D. Dzubairaeve were questioned. The trial was adjourned until 27 September 2010 so that witnesses who had failed to appear and the injured party could be summoned and questioned.

1958. During the trial hearing on 27 September 2010, witness Ms. T.A. Kagyarova was questioned. Mr. Krasnenkov, representative of the injured party, filed a request for the court to order an additional linguistic examination. The defendant, Mr. Orlov, and his lawyer, Mr. Reznik, raised an objection to the requested examination. Ms. T.V. Popova, assistant prosecutor, requested time to prepare for the submission of the findings. The trial was adjourned until 14 October 2010.

1959. During the trial hearing on 14 October 2010, witnesses Mr. S.K. Komkov, Mr. I.K. Dadalaev and Mr. N.S. Nukhazhiev were questioned. The trial was adjourned until 2 November 2010 so that witnesses who had failed to appear could be summoned and questioned.

1960. During the resumed proceedings on 2 November 2010, written materials relating to the case were examined. The trial was adjourned until 25 November 2010 so that witnesses who had failed to appear and the injured party could be summoned and questioned.

Observations

1961. The Special Rapporteur thanks the Government for the responses received to the communications sent during the reporting period. However, he regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 8 April 2011. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

1962. The Special Rapporteur remains deeply concerned that journalists, human rights defenders and members of political opposition groups continue to face harassment, intimidation and attacks, including smear campaigns against prominent Government critics. The Special Rapporteur also expresses his serious concern regarding lack of effective investigations into attacks on and murders of human rights defenders and journalists, including the death of Ms. Anna Politkovskaya.

Rwanda

Allegation letter

1963. On 6 July 2010, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the situation of human rights defenders, sent an allegation letter concerning the death of **Mr. Jean Leonard Rugambage**, Deputy Editor of the Rwandan local-language *Umuvugizi* newspaper.

1964. According to the information received, on 24 June 2010, at about 10:00 p.m., Mr. Rugambage was reportedly shot dead in front of his home in Nyamirambo, Kigali by unidentified gunmen. Witnesses indicated that they saw the gunmen flee in a car. The police arrived at the scene soon after the shooting and have opened investigations into the case.

1965. Mr. Rugambage had reportedly been investigating the assassination attempt of Mr. Kayumba Nyamwasa, the exiled former Chief-of-Staff of the Rwandan Army, which occurred in Johannesburg, South Africa, on 19 June 2010. On 24 June 2010, the day of Mr. Rugambage's murder, *Umuvugizi* newspaper had published an on-line article, alleging that Rwandan intelligence officials were linked to the shooting. Prior to his killing, Mr. Rugambage had told his colleagues that he was under intensified surveillance.

1966. In 2007, Mr. Jean Bosco Gasasira, Editor of *Umuvugizi*, fled into exile in a neighbouring country after being assaulted by unidentified men in Kigali.

1967. Grave concern was expressed that the killing of Mr. Rugambage might be linked to the exercise of his right to freedom of opinion and expression. Further concern was expressed for the physical and psychological integrity of journalists of *Umuvugizi*, and more generally, for journalists throughout the country.

Urgent appeal

1968. On 19 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government concerning Mr. **Pascal Nyilibakwe**, Executive Secretary of the Rwandan section of Human Rights League of the Great Lakes (LDGL). LDGL is an independent, regional umbrella organisation which works on human rights issues in Rwanda.

1969. According to the information received, in September 2010, Mr. Pascal Nyilibakwe was forced to flee Rwanda as a result of a campaign of threats and harassment against him, allegedly linked to his role as Executive Secretary of LDGL.

1970. In light of Rwanda's Universal Periodic Review (UPR), LDGL became involved in preparing the civil society report which was to be presented to the UN Human Rights Council in January 2011.

1971. In this connection, it is reported that, in September 2009, training sessions were organised by LDGL to create awareness of the existing regional and international protection mechanisms available to human rights defenders. Given the fact that the first training session was not well attended, a follow up training session was held over a three-day period from 9 to 12 February 2010. The second training session was reportedly organised in conjunction with LDGL, the Office of the High Commissioner for Human Rights and the National Commission for Human Rights, and was attended by thirty-two Civil Society Organizations. During this session it is reported that a steering committee was established to identify and investigate human rights issues with a view to drafting a report to be submitted as part of the Universal Periodic Review process. The final report was shared with Government agencies, diplomatic missions and other organizations that participated in the process. The report was submitted on 5 July 2010.

1972. It is alleged that in September 2010, LDGL was targeted by a smear campaign led by some of the civil society organizations that had participated in the aforementioned training sessions. These organizations reportedly disassociated themselves from the training and the report produced, stating that they had been falsely included in the report with the summary of the stakeholder's information to be submitted to the Universal Periodic Review. It is reported that these organizations did so as a result of the pressure to retract their support from the mentioned initiative.

1973. Following the smear campaign, Mr. Nyilibakwe and the Chair of the steering committee fled the country after receiving threats against them and their families.

1974. According to the information received, on 11 September 2010, two officers from the Criminal Intelligence Division entered the offices of LDGL and began questioning the guard who was present at the time. Two other officers from the Criminal Intelligence Division remained outside the premises. Furthermore, shortly after Mr. Nyilibakwe had fled the country, his personal driver was detained and questioned by officers of the Criminal Investigation Division. He was questioned about how Mr. Nyilibakwe had fled the country.

1975. Allegedly, the threats and harassment experienced by Mr. Nyilibakwee originated in 2008 when LDGL published a controversial report on legislative elections. In 2008, the Immigration office allegedly refused to register LDGL, however as a result of international pressure, LDGL was eventually registered. In August 2010, LDGL was also involved in monitoring elections which were held in Rwanda. In August 2010, LDGL again published a controversial report exposing alleged breaches in the election procedure. It is reported that following the publication of this report, Mr. Nyilibakwee received numerous threats from Government officials.

1976. Concern was expressed over the allegations that Mr. Nyilibakwee may have been threatened and harassed as a result of his work in the defence of human rights, in particular due to his involvement in the publication of a shadow report for the UPR, and that this could have been an act of reprisal for trying to engage with a UN human rights body. Further concern was expressed for the physical and psychological integrity of Mr. Nyilibakwee should he decide to return to Rwanda as well as for the physical and psychological integrity of his family members.

Observations

1977. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 6 July 2010 and 10 March 2011. He urges the Government to respond to the concerns raised by him, and to

provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Saudi Arabia

Urgent appeal

1978. On 28 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the situation of **Mr. Mohammed Saleh El-Bejadi**, supervisor of the website “Monitor of Human Rights in Saudi Arabia-Al-Marsad” and co-founder of the Saudi Civil & Political Rights Association (ACPRA) established in October 2009. He was previously the host of a weekly on-line forum called “The Citizen and His Rights”,

1979. According to the information received, in March 2009, Mr. El-Bejadi was allegedly summoned to the Intelligence Police Department and interrogated about his involvement on internet reports and protest activities calling for democratic reforms and the release of detainees. It is alleged that following his interrogation, a travel ban was issued against him on 23 July 2009 by the passport authorities in Barida.

1980. On 2 March 2010, Mr. El-Bejadi’s passport was allegedly confiscated by a passport officer at the passport checkpoint at King Khalid airport in Riyadh. Mr. El-Bejadi, who was on his way to Qatar, was informed that he was not allowed to travel. Mr. El-Bejadi argued that the travel ban issued against him in July 2009 had been lifted but was allegedly told that “the ban was reinstated three hours ago according to an order by the security affairs at the Ministry of Interior”.

1981. Furthermore, it is alleged that since 2009, Mr. El-Bejadi and members of his family have been threatened by phone calls and messages.

1982. Concern was expressed that the restrictions on the freedom of movement of Mr. El-Bejadi and the acts of intimidation against him and members of his family might be directly related to his work in defense of human rights.

Response from the Government

1983. In a letter dated 10 March 2010, the Government responded to the communication sent on 28 April 2010, by stating that the competent authorities in the Kingdom of Saudi Arabia have indicated that the information received regarding the situation of Mr. Mohammed Saleh El-Bejadi is totally unsubstantiated insofar as neither he nor his family were found to have submitted any complaint or have been subjected to interrogation due to his publication of material on the Internet.

1984. The travel ban was imposed on him in accordance with a statutory measure based on article 6 of the Travel Documents Regulations promulgated by Royal Decree No. M/44 dated 28/5/1421 AH (28 August 2010).

Urgent appeal

1985. On 16 November 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the situation of **Mr. Fahd Bin Abdu-Rahman Al-Harbi**, also known as Fahd Al Jukhaidib. Mr. Al-Harbi is the editor of the daily newspaper Aljazierah, and principal of a secondary school.

1986. According to the information received, Mr. Al-Harbi was accused of leading a protest among residents of Qubba to the local electricity department, in order to demand that action be taken to resolve regular power cuts affecting the town. Mr. Al-Harbi also reportedly published the story on the front page of Aljazeera. Subsequently, the electricity company yielded to the demands of the local residents, and sent additional power generators to the town.

1987. However, following the protest, Mr. Al-Harbi was allegedly summoned by the police, interrogated, and charged with instigating protests. He was brought before a court in Qaseem and, on 26 October, sentenced to two months imprisonment and 50 lashes, 25 of which would take place in public, in front of the local electricity department.

1988. Mr. Al-Harbi has reportedly been assigned a lawyer to appeal his sentence.

1989. Given the severity of the corporal punishment to which he had allegedly been sentenced, concern was expressed for the physical and psychological integrity of Mr. Fahd Bin Abdu-Rahman Al-Harbi. Further concern was expressed that the conviction of Mr. Al-Harbi may be related to his peaceful and legitimate activities in defence of human rights.

Urgent appeal

1990. On 16 December 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government concerning the arrest and detention of Mr. **Mohamed bin Abdullah bin Ali Al-Abdulkareem**. Mr. Al-Abdulkareem, a professor of law in Mohamed ibn Saud University in Riyadh, is a member of the Association for Civil and Political Rights and the Arab Organisation for Liberties and Good Governance, as well as editor in chief of the Journal of the National Congress.

1991. According to the information received, Mr. Al-Abdulkareem was arrested at his home on 5 December 2010 by agents of the general intelligence directorate. It is reported that the agents did not possess a judicial warrant, nor did they inform Mr. Al-Abdulkareem of the reasons for his arrest. Mr. Al-Abdulkareem is currently detained in Al Hayr prison, near Riyadh.

1992. It is reported that, on the same day, one of Mr. Al-Abdulkareem's close friends attempted to obtain information regarding the location of Mr. Al-Abdulkareem's detention and the reasons for the same, but was unable to obtain such information from neither the Al-Aicha nor Al-Hayr prison, where Mr. Al-Abdulkareem is reportedly detained. The prison authorities have yet to officially confirm Mr. Al-Abdulkareem's arrest.

1993. However, it is reported that Mr. Al-Abdulkareem has been able to contact his wife on two occasions via telephone since his arrest, and thus could inform her of his whereabouts.

1994. Concerns have been expressed by Mr. Al-Abdulkareem's family, as well as the organisations of which he is a member, that his arrest is related to the publication of an academic article which analysed issues related to succession and the mechanisms for transfer of power in Saudi Arabia on his Facebook page. It is reported that the same article is available on many Internet sites and has generated debate in Saudi civil society concerning the organisation of power in the Kingdom.

1995. On 8 December 2010, a group of lawyers defending Mr. Al-Abdulkareem presented a request in his name calling for his fundamental rights guaranteed by national law to be respected including, inter alia, that he be provisionally released with immediate effect as he is not the object of a crime serious enough to merit his continuing detention. It is reported that the lawyers in question have yet to receive a response from the authorities.

Urgent appeal

1996. On 3 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government concerning the detention of Mr. **Ahmad bin Sa'd al-Ghamdi**, Mr. **Abdul Aziz al-Wuhaibi**, Mr. **Muhammad bin Hussain al-Qahtani** and Mr. **Muhammad bin Nasser al-Ghamdi**, founders of a political party, the Islamic Omma Party.

1997. It is reported that on 16 February 2011, Mr. Ahmad bin Sa'd al-Ghamdi, Mr. Abdul Aziz al-Wuhaibi, Mr. Muhammad bin Hussain al-Qahtani and Mr. Muhammad bin Nasser al-Ghamdi, together with three other Saudi Arabian citizens, were arrested by members of the Interior Ministry's General Intelligence. A week prior to their detention, on 9 February 2011, the individuals mentioned above had submitted a request for recognition of what would be Saudi Arabia's first political party, the Islamic Omma Party. All of them were asked to sign an undertaking that they would renounce their activities with the party. Mr. Ahmad bin Sa'd al-Ghamdi, Mr. Abdul Aziz al-Wuhaibi, Mr. Muhammad bin Hussain al-Qahtani and Mr. Muhammad bin Nasser al-Ghamdi refused to do so and as a result have been placed in detention. The three others did sign such an undertaking and were subsequently released.

1998. The Islamic Omma Party was founded by nine citizens of Saudi Arabia, including intellectuals, writers and lawyers on 9 February 2011. According to the information received, they had stated that their values stem from Islamic teachings and the principles of justice, freedom and charity and that their goals include greater political freedoms in Saudi Arabia, such as recognition of elections, the separation of powers, the independence of the judiciary, social justice and non-discrimination.

1999. It is further reported that Mr. Abdul Aziz al-Wuhaibi was allowed a short telephone call to his family on 18 February 2011 and told them that he was being detained at al-Hair prison. Reportedly, he has not been allowed any other contact with the outside world. Although the whereabouts of Mr. Ahmad bin Sa'd al-Ghamdi, Mr. Muhammad bin Hussain al-Qahtani and Mr. Muhammad bin Nasser al-Ghamdi are unknown, there are reasons to believe that they are also being held incommunicado at al-Hair prison.

2000. Concerns were expressed at the allegation that Mr. Ahmad bin Sa'd al-Ghamdi, Mr. Abdul Aziz al-Wuhaibi, Mr. Muhammad bin Hussain al-Qahtani and Mr. Muhammad bin Nasser al-Ghamdi are being held in detention on the sole basis of the peaceful exercise of their right to freedom of expression and association.

Urgent appeal

2001. On 22 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding the arrest and detention of Mr. **Muhammad al-Wad'ani** during a protest held in Riyadh, Kingdom of Saudi Arabia, on 4 March 2011.

2002. According to the information received, on 4 March 2011, Mr. Muhammad al-Wad'ani, a 25 year-old teacher, was arrested outside the al-Rajih mosque in the eastern part of Riyadh by men in plain clothes, allegedly members of the General Intelligence. At the moment of his arrest, Mr. al-Wad'ani was participating in a protest held in Riyadh, which called for reforms in the Kingdom of Saudi Arabia. It is alleged that prior to the protest on 2 March 2011, Mr. al-Wad'ani posted a video on the YouTube website calling for the fall of the monarchy and the end of arrest and detention without charge or trial.

2003. Some of the other individuals, who participated in the protest on 4 March 2011, were also allegedly arrested but soon released by the authorities. Similarly, reports have been received regarding the detention of 24 men on 3 and 4 March 2011, in connection with protests in the city of al-Qatif, which aimed at denouncing prolonged detention without trial of members of the Shi'a minority. They were subsequently released on 8 March 2011, without charge and allegedly only after having signed a pledge not to protest again.

2004. Mr. al-Wad'ani continues to be detained incommunicado and is believed to be at risk of torture or ill-treatment. There are reasons to believe that he might be currently detained at al-Ha'ir prison in Riyadh.

2005. Concerns were expressed at the allegation that Mr. al-Wad'ani is currently detained incommunicado solely for the peaceful exercise of his right to freedom of expression. Similar concerns were expressed with regard to allegations that other protesters, in particular members of the Shi'a minority, have been detained without charge and trial.

Observations

2006. The Special Rapporteur regrets that the Government had only responded to one out of five communications sent during the reporting period, in which the Government indicated that the information contained in the communication is totally unsubstantiated. He also regrets that the Government has not responded to four communications sent in 2010, and urges the Government of Saudi Arabia to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2007. The Special Rapporteur remains concerned about reported restrictions to the right to freedom of opinion and expression in the country and urges the Government of Saudi Arabia to guarantee a climate where all individuals can express themselves freely without fear of persecution.

Serbia

Response received to communications sent earlier

2008. In a letter dated 25 May 2010, the Government responded to the communication sent on 19 January 2010 concerning **Mr. Marko Karadzic**, State Secretary of the Ministry for Human and Minority Rights of the Republic of Serbia as follows.

2009. On 20 January 2010 a criminal complaint by an unknown person was forwarded to the Ministry of Interior for the committee criminal offence of grand larceny as prescribed in Article 204 of the Criminal Code of the Republic of Serbia to the detriment of Mr. Marko Karadzic. The mentioned criminal complaint was submitted to the Police Directorate of the City of Belgrade, the Directorate of Criminal Complaints, for processing with an order to send it to the competent public prosecution office, pursuant to Article 224, paragraph 3 of the Criminal Procedure Code as well as to make the checks of the allegations contained in the complaint upon receipt of the request to collect the necessary information.

2010. According to the report by the police officers, within the period from 12:30 to 16:30pm on 8 January 2010, the criminal offence of grand larceny as prescribed in Article 204 was committed to the detriment of Mr. Marko Karadzic, the State Secretary of Human and Minorities Rights from Belgrade. The criminal offence was committed by an unknown perpetrator by breaking the outside door and stealing EUR 150.00 from the flat of the damaged person, together with other valuables. The specialized teams of the Police Directorate of the City of Belgrade carried out the investigation on the scene of the crime.

2011. The scene of the crime was processed with the aim to find possible traces, the swabs were taken in order to establish possible DNA profiles of the perpetrator, the traces of papillary lines were fixed as well as traces of footwear. On 11 January 2010, the Ministry of Interior, the Police Directorate of the City of Belgrade, Department of Investigation, Operative Jobs, submitted to the First Public Prosecutor Office a complaint against an unknown person for the criminal offence of grand larceny as prescribed in Article 204, paragraph 1, item 1 of the Criminal Code to the detriment of Mr. Marko Karadzic.

South Africa

Allegation letter

2012. On 14 January 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on violence against women, sent an allegation letter concerning the situation of Ms. **Millicent Gaika**, a woman who was allegedly beaten and raped by a man who intended to "cure" her from her sexual orientation, and Ms. **Ndumie Funda**, a local community activist supporting victims of "corrective" rape.

2013. According to the information received, Ms. Gaika, a lesbian woman, and her friends were walking home when Mr. Andile Ngoza, a man she had known for a number of years and who had never objected to her sexuality before, asked her for a cigarette. She stayed to smoke with him, and followed him into his room when he refused to pass the cigarette to her. The man then locked the door and started hitting her while she tried to fight back. Ms. Gaika was strangled with a wire, tortured and raped for five hours by Mr. Ngoza who intended to "turn her straight".

2014. Since this incident took place, the court-case addressing it has reportedly been postponed numerous times, last time to February 2011, and Mr. Ngoza is currently out on bail, roaming the same streets where Ms. Gaika lives. This has forced Ms. Gaika to go into hiding for fear of her safety.

2015. Ms. Ndumie Funda, a local community activist reached out to Ms. Gaika through a small local charity she set up in the Cape Town township of Gugulethu to rescue and support survivors of "corrective" rape. She is currently covering and supporting the criminal proceedings of Ms. Gaika. Although Mr. Ngoza is forbidden to enter Gugulethu as part of his bail conditions, he has reportedly broken those conditions constantly and threatened Ms. Funda various times.

2016. Since his release he has allegedly asked family and friends to attack Ms. Funda, constantly harassed her and made threats against her life and against her partner. This has forced Ms. Funda to go into hiding as well, which has prevented her from carrying out the assistance work she provides to other women victims of violence.

2017. Serious concern was expressed about the physical and psychological integrity of Ms. Gaika and Ms. Funda. Further concern was expressed that these attacks do not constitute isolated incidents and that lesbian women in South Africa face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths that maintain they would change their sexual orientation if they are raped by a man. Furthermore, concern was expressed over increasing reports that hate crimes against lesbians are not being recognized or punished by the South African legal system.

Observations

2018. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 14 January 2011. He

urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Sri Lanka

Urgent appeal

2019. On 17 March 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning **the existence of a worrying and increasing trend aimed at delegitimizing the activities of human rights organizations, individual human rights defenders and journalists working in Sri Lanka**. Such information includes reports regarding physical attacks, threats, intimidation and public smear campaigns.

2020. Such attacks and threats, while experienced since 2006, have tangibly intensified following the Special Session of the Human Rights Council on Sri Lanka, which was held on 26-27 May 2009. It is reported that the Human Rights Minister, Mr. Mahinda Samarasinghe commented in *The Hindu* newspaper that “The people who go and sit in the cafeterias in the UN and lobby people in a very subjective manner putting forward those kind of sentiments (against Sri Lanka) would be inviting a very stern response from the government of Sri Lanka”.

2021. In another article published in the online edition of the newspaper *Divayina* on 25 May 2009, it was alleged that “an NGO team goes to Geneva to defend the LTTE leadership. A team of people from NGOs in this country, including a representative of the Free Media Movement, has reached Geneva airport (...) with the aim of going before the Human Rights Council with inaccurate and false statements against the government of Sri Lanka and the security forces”. It is further reported that the Inspector General of the Police claimed in an interview on ITN TV station on 28 May 2009, that several journalists were on LTTE payroll. The Inspector General of the Police further alleged that these journalists have committed treason and distorted and misreported against Sri Lanka.

2022. On 3 March 2010, the Sri Lankan news website *Lanka News Web* published an article and a list containing the name of 31 human rights defenders and journalists allegedly compiled by the Sri Lankan State Intelligence Services. The list includes human rights defenders and journalists categorized according to their work, and a brief description of the activities of each individual. The list contains the names of individuals who have been engaged in “international outreach” on human rights related issues and grades them according to their perceived importance to the intelligence services. Several human rights defenders and journalists are referred to as “providing information on human rights issues and IDPs to several local and international outlets”, as “international platform speaker on media/human rights” and as a person who “speaks on human rights and media freedom and involved in advocacy overseas”. While the purpose of the list remains unclear, it gives rise to a serious concern about the physical and psychological integrity of the individuals contained therein.

2023. The head of Transparency International’s Sri Lanka office, Mr. J. C. Weliamuna is at the top of the list. It was reported on 8 March 2010 that the Government of Sri Lanka is planning to arrest Mr. Weliamuna in connection with the alleged misuse of funds. This information comes amidst a media campaign targeted against the Sri Lankan branch of Transparency International. It is feared that the allegations may be related to reports that Transparency International issued in December 2009 and January 2010, which included allegations about violation of election laws and misuse of public resources by the ruling party, and would be aimed at discrediting organizations engaged in monitoring elections.

Mr. Weliamuna was the subject of a communication sent on 6 October 2008 by the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders and the Chairman of the Working Group on Enforced or Involuntary Disappearances. We have not yet received a response to this communication from your Excellency's Government. The communication related to a grenade attack on the house of Mr. Weliamuna, causing damages to his property. It is reported that no credible inquiry has been carried out into this attack.

2024. Mr. Paikiasothy Saravanamuttu, Executive Director of the Centre for Policy Alternatives, has been listed number three in the list. Mr. Saravanamuttu has been receiving death threats mainly in connection with the extension of GPS Plus (Generalized System of Preferences) status by the European Union to Sri Lanka in case it should have been rejected. Mr. Saravanamuttu was the subject of an urgent appeal sent on 24 August 2009 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. A response from your Excellency's Government to this communication was received on 25 August 2009.

2025. Mr. Sunanda Deshapriya, a prominent journalist and human rights defender, who is number six on the list, has been living in exile in Switzerland since May 2009, due to the threats received and the ongoing denigration campaign in the media following his participation and intervention at the March 2009 session of the Human Rights Council and the 11th Special Session on Sri Lanka. He has been accused of being a "traitor" and a "liar" due to his participation at the Special Session. Videos containing death threats against him have been posted on the social networking site Facebook; he has received numerous threatening text messages and has been vilified in television and radio shows and a number of editorials. The Prime Minister of Sri Lanka, Mr. Mahinda Rajapaksa allegedly stated in an interview on 7 June 2009 in *The Nation* that it was a betrayal by Mr. Deshapriya to talk against his own country and to say that Sri Lanka violates human rights, while countries like India, China and Russia were firmly standing by the Government. In an interview with ITN TV on 4 June 2009, Mr. Mahinda Samarasinghe, the Minister of Disaster Management and Human Rights allegedly did not object to the talk show host's suggestion that Mr. Deshapriya should be expelled from the country for his intervention at the HRC Special Session. Mr. Deshapriya was the subject of urgent appeals sent on 7 June 2006 and 23 May 2005 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A response from the Government to this communication was received on 27 June 2006.

2026. Concern was expressed that threats and harassment of, and intimidation against human rights defenders and journalists, including media smear campaigns, may be related to their legitimate activities in defense of human rights, in particular to their international advocacy and outreach efforts. Further serious concern was expressed that some of the threats may be related to their having cooperated with the UN Human Rights Council and Special Procedure mandate holders. Given the extent of the allegations, an overarching concern was expressed that the threats, attacks and media smear campaigns may form part of a broader attempt to delegitimize the activities of human rights defenders who are critical of actions and policies of the Government.

Observations

2027. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 17 March 2010, and to earlier communications sent on 9 February 2010, 6 November 2010, 15 October 2010, 9 October 2010, and 8 October 2010. He urges the Government to respond to the concerns

raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2028. The Special Rapporteur remains seriously concerned about the situation of journalists and human rights defenders in Sri Lanka, and restrictions to the right to freedom of opinion and expression, as well as the rights to freedom of assembly and association. In particular, he expresses his grave concern regarding physical assaults, abduction, intimidation and harassment of journalists, and lack of effective investigation into such acts and prosecution of perpetrators.

2029. In this regard, the Special Rapporteur expresses his continued concern regarding the disappearance of Mr. Prageeth Eknaligoda since 24 January 2010, who had been reporting on the 26 January 2010 presidential elections and had completed an analysis that favoured the opposition candidate, Mr. Sareth Fonseka. He urges the Government to undertake independent and effective investigation into his whereabouts and the circumstances of his disappearance, and to bring responsible persons to account.

Sudan

Urgent appeal

2030. On 23 November 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal regarding the situation of **Mr. Abdelrahman Mohamed Al-Gasim**, Legal Aid and Training Coordinator of the Darfur Bar Association, and a member of the Executive Committee for the Sudanese Human Rights Monitor; **Mr. Abdelrahman Adam Abdallah and Mr. Derar Adam Abdallah**, Deputy Director and Administration Officer of the Sudan-based Human Rights and Advocacy Network for Democracy respectively; **Mr. Manal Mohamed Ahmed, Ms. Aisha Sardo Sherif, Ms. Aziza Ali Idris, Mr. Abu Gasim Al Din, and Mr. Zakaria Yacoub**, Darfuri human rights activists; and **Mr. Jaafar Alsabki Ibrahim**, a Darfuri editor working for the newspaper Al Sahafa in Khartoum.

2031. According to the information received, on 29 October 2010, Mr. Abdelrahman Mohamed Al-Gasim was reportedly arrested by members of the National Intelligence and Security Services (NISS) in Khartoum. On 31 October, NISS agents informed his family that he had been arrested, but did not specify the charges brought against him. Neither his lawyer, nor his family were allowed access to him. The whereabouts of Mr. Abdelrahman Mohamed Al-Gasim remain unknown as of the time of the communication.

2032. It was further alleged that Mr. Abdelrahman Mohamed Al-Gasim received threats from Sudanese officials while participating in the 15th session of the Human Rights Council in Geneva in September 2010. Mr. Abdelrahman Mohamed Al-Gasim lobbied for the extension of the mandate of the Independent Expert on the situation of human rights in the Sudan, and delivered a number of oral interventions before the Council on alleged human rights violations committed by the Sudanese authorities in the country. He was also a panelist in a side-event entitled "Sudan: Impunity, Repression and Conflict on the Rise", co-sponsored by the non-governmental human rights organizations Cairo Institute for Human Rights Studies (CIHRS), Amnesty International, Human Rights Watch, and the International Federation for Human Rights. Furthermore, Mr. Abdelrahman Mohamed Al-Gasim was scheduled to take part in the stakeholder's submission, co-sponsored by CIHRS and its partner organizations in the Sudan, on the Universal Periodic Review of the Sudan.

Finally, Mr. Abdelrahman Mohamed Al-Gasim was due to attend the 48th session of the African Commission for Human and Peoples Rights in Banjul in November 2010.

2033. On 30 October 2010, Mr. Abdelrahman Adam Abdallah, Mr. Derar Adam Abdallah, Mr. Manal Mohamed Ahmed, Ms. Aisha Sardo Sherif, Ms. Aziza Ali Idris, Mr. Abu Gasim Al Din, and Mr. Zakaria Yacoub were arrested by NISS agents, following the participation by some of them, in a youth forum hosted allegedly by a pro-democracy student movement called Girifna. During the forum, the issues of social development and the administration of justice in Darfur were discussed. Lawyers and families have reportedly been denied access to the detainees and their current fate and whereabouts are unknown.

2034. On 3 November 2010, Mr. Jaafar Alsabki Ibrahim was arrested by NISS agents at the premises of Al Sahafa in Khartoum. He was prevented from making a call to his family before being taken to an undisclosed location.

2035. Serious concerns were expressed that the arrest and detention of the nine aforementioned persons were linked to their legitimate activities in defence of human rights. In view of the fact that their fate and whereabouts were unknown, further concerns were expressed for their physical and psychological integrity.

Urgent appeal

2036. On 4 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Independent Expert on the situation of human rights in the Sudan, sent an urgent appeal regarding **arrests during peaceful demonstrations**, including Mr. **Lois Ewell**, also known as Louis Awil Weriak, a student and General Secretary of the Students Union at the University of Khartoum; Mr. **Tharwat Swaraldahab**, a Canadian citizen and member of Liberal Democracy Party of Sudan; and several journalists, including Mr. **Hamza Baloul**, correspondent of Alsharq newspaper; Ms. **Sarah Tag**, journalist working for Alshahafa newspaper; Mr. **Ali Haj Al-amin**, journalist working for Airas Alhurrya; Mr. **Hussein Khogali**, editor of Ali-Wan newspaper; and Mr. **Mohamed Amir Musa**, journalist for a Turkish news agency Al-ikhlas.

2037. According to the information received, on 30 January 2011, peaceful demonstrations were organized in several cities, including Khartoum and Omdurman, to call for democracy and an improvement in socio-economic conditions. During these demonstrations, Mr. Ewell was arrested in Khartoum by the National Intelligence and Security services (NISS), was allegedly badly tortured and is now in very serious condition at an undisclosed NISS detention facility. Since his arrest, he has not been charged with any offence. He has also not been granted access to his families or lawyers. It is unclear whether he is being provided with medical or other assistance.

2038. Mr. Tharwat Swaraldahab was arrested at 10:00am on 30 January 2011, near the medical faculty of the University of Khartoum. He was held at an undisclosed location and has been reportedly tortured to the point where he has been hospitalised. He is being denied access to legal representation and family visits.

2039. In addition, it has been reported that the following journalists have also been arrested: Mr. Hamza Baloul, Ms. Sarah Tag, Mr. Ali Haj Al-amin, Mr. Hussein Khogali, and Mr. Mohamed Amir Musa.

2040. Concerns were expressed about the detention of above-mentioned individuals, and in particular injuries that Mr. Ewell sustained as a result of being tortured by State officials. He is believed to be in very poor health. Concerns were also expressed about the "2010

National Security Act (2010 NSA)” which provides NISS agents immunity for acts committed in the course of their work.

Urgent appeal

2041. On 28 March 2011, the Special Rapporteur, together with the Independent Expert on the situation of human rights in the Sudan, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, sent an urgent appeal concerning the continued detention at Kober prison in Sudan of Mr. **Abu Zara al-Amin**, deputy editor of the opposition daily newspaper Rai al-Shaab, and the alleged detention in an unknown location of Mr. **Suleiman Wida’a**, Ms. **Fatima Bashir** and Ms. **Fathia Tinga** of Al-Midan newspaper, as well as Mr. **Jaafar Alsabki Ibrahim** of Al-Sahafa newspaper.

2042. According to the information received, on 16 May 2010, Mr. Abu Zara al-Amin, a deputy editor of the opposition daily newspaper Rai al-Shaab, together with Mr. Ashraf Abdelaziz, an editor for the same newspaper, and Mr. Dahab Ibrahim, a senior political reporter, were arrested by the National Intelligence and Security Service (NISS) at the newspaper’s offices in Khartoum, Sudan. All of them were accused of “undermining the constitutional system” and “publishing false information” and were convicted on 15 July 2010. Mr. al-Amin was sentenced to five years of imprisonment. Mr. Abdelaziz and Mr. Ibrahim were sentenced to two years of imprisonment which, following an appeal in November 2010, was reduced to one year. At the hearing in November 2010, Mr. Abdelaziz and Mr. Ibrahim were informed that their newspaper Rai al-Shaab was reportedly suspended for one year.

2043. While Mr. Abdelaziz and Mr. Ibrahim were released on 6 February 2011, Mr. al-Amin continues to be held in detention at Kober prison. Reportedly, his health condition is rapidly deteriorating as a result of alleged torture and the absence of adequate medical treatment. Upon their release, both Mr. Abdelaziz and Mr. Ibrahim reported acts of torture inflicted upon them by NISS agents while at Kober prison and the fact that they were at no point informed of the reasons for their arrest.

2044. It is further reported that on 3 February 2011, Mr. Suleiman Wida’a, Ms. Fatima Bashir and Ms. Fathia Tinga, all journalists working for the Al-Midan newspaper, were arrested allegedly by NISS forces in connection with their coverage of street protests on 30 January 2011, and since then their current fate and whereabouts are unknown. Mr. Jaafar Alsabki Ibrahim, a journalist for Al-Sahafa newspaper, has been reportedly detained since 3 November 2010, and his current fate and whereabouts are unknown.

2045. Concerns were expressed at the allegation that the aforementioned journalists are detained solely due to their pacific exercise of the right to freedom of expression. Grave concerns were also expressed at the allegation that the fate and whereabouts of most of these journalists are unknown.

Response received to communication sent earlier

2046. In a letter dated 18 May 2010, the Government replied to the communication sent earlier on 27 January 2010 regarding Messrs. **Osman Abdu Ali**, **Ali Mahmood Ali Romay**, **Said Hamed Mohamed Kheir**, **Mohammed Osman Idris**, **Mohamed Mohamed Said**, **Idrees Mohamed Ali Idriss**, **Hamid Osman Adam**, **Saleh Mohamed Kheir**, **Mahmoud Mohamed Adam**, and **Sliem Edriss**, and concerns expressed regarding their arrest and detention, and the dispersion of reportedly peaceful demonstrations with the use of disproportionate force.

2047. A group of 800 supporters of the independent candidate for the office of Governor, Hamad Mohammad Ali, demonstrated in the streets of the city without obtaining a permit from the authorities on 19 January 2010.

2048. The police intervened and the chief of the force ordered them to disperse, but they ignored the orders issued pursuant to the provisions of the 1991 Code of Criminal Procedure.

2049. Thirty-eight persons were arrested, proceedings were instituted against them pursuant to articles 67, 68 and 69 of the Code and their vehicles were seized.

2050. Nine of the accused filed a complaint with the Public Prosecutor's Office, claiming that they had been injured during the dispersal of the demonstration. The Office ordered a preliminary investigation pursuant to article 47 of the 1991 Code of Criminal Procedure. On completion of the investigation, the Public Prosecutor's Office dismissed the complaint. They are:

- (a) Osman Idris;
- (b) Ali Mohamed Ibrahim;
- (c) Osman Yahya;
- (d) Abdallah Saleh;
- (e) Hassan Idris.

2051. All of the accused were released on bail. The seized vehicles were returned and the police notification was transmitted to the court.

Observations

2052. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 28 March 2011, 4 February 2011, 21 November 2010 and to five earlier communications sent in 2009 (14 December 2009, 17 April 2009, 2 April 2009, 24 March 2009 and 4 February 2009). He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2053. The Special Rapporteur reiterates his concerns expressed in his communications, in particular arbitrary arrests of journalists for their coverage of the elections. He also remains concerned about reports of arrests, torture and ill-treatment, and prosecution of perceived critics of the Government for exercising their legitimate rights to freedom of expression, assembly and association. He reiterates his recommendation to the Government to take all necessary measures to guarantee the right to freedom of opinion and expression of all individuals and to ensure that journalists and human rights defenders are able to operate in a safe environment without fear of persecution.

Syrian Arab Republic

Urgent appeal

2054. On 13 October 2010, the Special Rapporteur, together with The Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal concerning the arrest, and alleged disappearance of **Mr. Ismail Abdi**. Mr. Abdi is a lawyer and member of the board of trustees of the

Committees for the Defence of Democracy Freedoms and Human Rights in Syria (CDDFHRS), and has written numerous articles concerning the situation of human rights in the Syrian Arab Republic.

2055. According to the information received, on 23 August 2010, Mr. Abdi was arrested by members of the Amn al Dawla (State Security Forces) in Aleppo Airport, Syrian Arab Republic, as he attempted to return from the Syrian Arab Republic to his residence in Germany, along with his wife and three of his children. Since his arrest, Mr. Abdi's family and colleagues have received no information regarding neither his location nor his fate.

2056. It was reported that while in the airport, Mr. Abdi was taken aside by members of the Amn al Dawla for a security check, before being taken away by the security agents without being able to communicate further with his family.

2057. Upon inquiring at the time of arrest as to where Mr. Abdi would be taken, Mr. Abdi's family members were reportedly informed by a member of the Amn al Dawla that he would probably be taken to the State Security headquarters in Qamishli. However, when asked, officials at said headquarters denied holding anyone by the name of Ismail Abdi.

2058. Mr. Abdi's family had expressed concern that the arrest and alleged disappearance are related to his work on CDDFHRS' publication, in February 2010, of a list of some 600 names of individuals who had allegedly been tortured and killed in Syrian prisons between 2008 and 2010.

2059. Concern was expressed that the arrest and alleged disappearance of Mr. Abdi are related to his peaceful and legitimate activities in defence of human rights, in particular with respect to the aforementioned publication. Furthermore, mindful of the fact that the location of Mr. Abdi's detention allegedly remains unknown and the lack of any formal charges brought against him, concern was expressed for his physical and psychological integrity.

Response from the Government

2060. In a letter dated 1 December 2010, the Government responded to the communication sent on 13 October 2010 as follows.

2061. With regard to the information that you have received in respect of Mr. Isma`il Abdi, a lawyer, we hereby inform you that Mr. Abdi was lawfully arrested on 23 August 2010 for publishing inflammatory articles that seek to undermine respect for the State, national sentiment and national unity, for bringing the country into disrepute abroad, for attacking the system of government in Syria and for communicating with Al-Mustaqillah and Al Jazeera satellite channels and making statements on the so-called persecution of the Kurds in the Syrian Arab Republic that would encourage the spread of sectarianism.

2062. Mr. Abdi was duly transferred to the Syrian courts, where the required legal action will be taken against him by means of an impartial and fair trial.

Urgent appeal

2063. On 9 November 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the situation of **Mr. Haytham Al-Maleh**. Mr. Al-Maleh, aged 79, has been a lawyer since the 1950s and in 2001 founded the Human Rights Association in Syria (HRAS).

2064. Mr. Al-Maleh was the subject of a Joint Urgent Appeal from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the

Special Representative of the Secretary-General on the situation of human rights defenders dated 23 February 2004; a Joint Urgent Appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment dated 21 October 2009; and a Joint Urgent Appeal sent by the Special Rapporteur on the independence of Judges and Lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment dated 18 March 2010. The response of your Excellency's government to the Joint Urgent Appeals dated 21 October 2009 and 18 March 2010 was received on 1 April 2010.

2065. According to information now received, on 4 July 2010, Mr. Haytham Al-Maleh was sentenced to three years imprisonment by a Syrian Military Court, on charges of disseminating false information which could harm the nation.

2066. Concerns have been expressed regarding the fairness of Mr. Al-Maleh's trial before a Military Court, given that Mr. Al-Maleh holds no military status, and the crime of which he was found guilty was not of a military nature. Furthermore, the Code of Military Procedures, in accordance with which Mr. Al-Maleh was sentenced, allegedly fails to offer many of the fair trial guarantees stipulated in the International Covenant on Civil and Political Rights and the Syrian Code of Criminal Procedures.

2067. On 15 October 2010, the appeal lodged by Mr. Al-Maleh's lawyer was rejected by the Damascus Appeals Court, Military Room. It is reported that Mr. Al-Maleh has no further recourse to appeal within Syria.

2068. Serious concerns have also been expressed regarding Mr. Al-Maleh's treatment while in detention and the conditions in which he is detained. Mr. Al-Maleh suffers from diabetes and an overactive thyroid gland, and it is alleged that, while he has been provided with some medication, he reportedly continues to be denied access to the medication specifically prescribed to him for his illnesses by his doctors. We hereby acknowledge receipt of the response provided by your Excellency's Government on 1 April 2010 concerning the medical assistance provided to Mr. Al-Maleh. However, we regret that the response did not provide substantive information regarding allegations indicating that Mr. Al-Maleh is being denied the specific medical assistance as prescribed by his doctors.

2069. It was reported that Mr. Al-Maleh shares a cell with as many as 60 other prisoners, in which there are no beds and a limited number of mattresses, and that the water in the prison is often cut off, leading to health risks. It is also reported that Mr. Al-Maleh has developed a degenerative knee infection, back problems, and recurrent influenza.

2070. Given Mr. Al-Maleh's age, state of health and the conditions in which it is alleged that he is detained, serious concern was expressed for his physical and psychological integrity. Concern was also expressed that the rejection of the appeal against Mr. Al-Maleh's sentence may be related to his legitimate and peaceful work in defence of human rights, including as a lawyer. In this connection, further concern was expressed that the aforementioned decision forms part of a pattern of ongoing judicial harassment against human rights defenders and lawyers in Syria.

Urgent appeal

2071. On 11 November 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture

and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the situation of **Mr. Muhannad Al-Hassani**, President of the Syrian Human Rights Organization “Sawasiya” and a Commissioner of the International Commission of Jurists, currently serving a three year prison sentence for “weakening national sentiments and encouraging racist and sectarian feelings”, and “transferring false and exaggerated news that weaken national sentiments”. In October 2010, Mr. Al-Hassani received the 2010 Martin Ennals Award for human rights defenders and the Dean Award of the Amsterdam Bar Association.

2072. The case of Mr. Al-Hassani has previously been addressed by the Special Procedures Mechanisms in a Joint Urgent Appeal sent by the Vice-Chair Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment dated 3 August 2009; a Joint Urgent Appeal sent by the Special Rapporteur on human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, dated 10 December 2009; and a Joint Urgent Appeal sent by the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers dated 6 July 2010. In these communications concern was raised that the disbarment, charges, trial and sentencing of Mr. Al-Hassani were related to his peaceful and legitimate activities in defence of human rights, including as a lawyer. The response of the Government to the communication dated 10 December 2009, was received on 29 July 2010.

2073. According to information now received, on 28 October 2010, Mr. Muhannad Al-Hassani, who reportedly shares a cell with at least 30 convicted criminals, was attacked and severely beaten by a cell-mate, whose name is known to us. The attack reportedly caused a wound in his forehead which required ten stitches, as well as swelling of his left eye and cheek. The alleged attacker is reported to be serving a prison sentence for rape, armed robbery and forming a criminal gang. As he assaulted Mr. Al-Hassani, the perpetrator allegedly accused him of being an agent for a foreign entity and not being a Syrian nationalist.

2074. It is reported that the prison authorities subsequently launched an investigation into the assault. However, it is alleged that in the process of the said investigation, comments made by the alleged attacker before the investigation committee in which he threatened to kill Mr. Al-Hassani were not recorded in the charge sheet. It is further alleged that despite making a request to transfer the alleged perpetrator to another cell, Mr. Al-Hassani remains imprisoned in the same cell along with his attacker.

2075. On 29 October 2010, the day following the attack, the Penal Chamber at the Court of Cassation reportedly rejected Mr. Al-Hassani’s appeal, confirming the three-year sentence passed by the Second Damascus Criminal Court on 23 June 2010, and leaving Mr. Al-Hassani with no further legal recourse within the Syrian Arab Republic.

2076. Given the serious risk that Mr. Al-Hassani may be subjected to further attacks, grave concern was expressed for his life, and physical and psychological integrity. Further concern was expressed that both the attack against Mr. Al-Hassani and subsequent rejection of his appeal before the Court of Cassation may have been related to his legitimate and peaceful activities in defence of human rights, particularly as a lawyer.

Urgent appeal

2077. On 25 November 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of

everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the situation of Mr. **Amro Okleh**, a writer and a political activist, who works as a government employee at the “Board of Control and Inspection” of Al Hassaka, the Syrian Arab Republic. Mr. Amro Okleh is a member of the Damascus Declaration for national democratic change and the author of a number of articles published in the Syrian press. Mr. Okleh is married with two children and lives in the Syrian Arab Republic.

2078. According to the information received, on 15 November 2010, Mr. Okleh, aged 46, was allegedly arrested by agents of the State Security Services. It is reported that the security agents did not present any judicial warrant, nor did they explain the reason for Mr. Okleh’s arrest. They reportedly raided Mr. Okleh’s home and confiscated various personal belongings, including his mobile phone, a laptop and a computer.

2079. It is reported that Mr. Okleh was subsequently taken to the Security State Services branch in Al Kameshli where he is currently held in incommunicado detention. It is further reported that Mr. Okleh has not been allowed to see his family, nor has he been provided with medical treatment, despite his serious health condition. Mr. Okleh had reportedly been suffering from cardiac condition and heart disease.

2080. Given that Mr. Okleh continues to be allegedly held incommunicado, concern was expressed about his physical and psychological integrity. Further concern was expressed that the arrest and subsequent incommunicado detention of Mr. Okleh may be related to his peaceful and legitimate political activities, particularly his recent activities linked to publishing in the local media.

Urgent appeal

2081. On 9 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the detention of and charges against Mr. **Ali Al-Abdullah**, member of the National Council of the Damascus Declaration for National Democratic Change, a legislative body composed of numerous opposition groups and activists who have been advocating for democratic reforms in the Syrian Arab Republic. Mr. Al-Abdullah has allegedly been imprisoned on three previous occasions: he spent six months in detention after returning from abroad to live in the Syrian Arab Republic in the 1990s; he served almost six months in prison in 2005 for his involvement with the Jamal al-Atassi Forum, where he read out a statement by the exiled Muslim Brotherhood leader who called for pluralism and human rights to be respected in the Syrian Arab Republic; and he served a six-month sentence in 2006 for having participated in a protest outside the Supreme Security Court (SSSC) against the trials that do not comply with international fair trial standards.

2082. According to recent information received, on 17 December 2007, Mr. Ali Al-Abdullah was detained by State security officials after he and others associated with the Damascus Declaration met to elect a new executive committee. He was sentenced by a criminal court in Damascus, together with 11 other activists, to two and a half years of imprisonment on vaguely defined charges of “weakening the national sentiment” and “spreading false or exaggerated news that would affect the morale of the country” (article 286 of the Penal Code).

2083. During his detention, Mr. Al-Abdullah wrote an article criticizing the Islamic Republic of Iran’s Wilayat-al-Faqih doctrine, which grants absolute political authority to a religious figure, as well as alleged human rights violations committed during the

presidential election in the Islamic Republic of Iran. On 23 August 2009, the article reportedly appeared online, and on 19 April 2010, Mr. Al-Abdullah was allegedly interrogated by a prosecutor from the State Security Court. In June 2009, he also allegedly made a statement via telephone to the Italian AKI news agency in which he praised the elections that had taken place in Lebanon and then criticized the Iranian authorities' use of excessive force against peaceful protestors demonstrating that month against the disputed presidential election results.

2084. On 17 June 2010, at the end of their prison terms, all detainees were released, except for Mr. Al-Abdullah. He was informed by the officials of Political Security, one of Syrian Arab Republic's security services, that his case will be referred to the military prosecutor for new charges relating to the article that he wrote on the Islamic Republic of Iran. On 19 September 2010, he was charged by a military investigative judge with "spoiling Syria's relations with another country" (article 278 of the Penal Code), for which, if found guilty, he could be sentenced to up to 15 years' imprisonment. On 1 December 2010, a military court confirmed the charge.

2085. On 7 February 2011, a hearing took place before the Second Criminal Military Court in Damascus, where the judge informed Mr. Al-Abdullah that the charge of "spoiling Syria's relations with another country" relate to his statement regarding the Islamic Republic of Iran. His lawyers have allegedly been unable to meet him without an officer from the security forces monitoring their conversations. Additionally, his lawyers have not had access to the full case file. His next hearing is scheduled to take place on 23 February 2011.

Urgent appeal

2086. On 18 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the sentencing of Ms. **Tal al-Mallohi**, a 19 year old high school student and blogger. Her blog (<http://talmallohi.blogspot.com>) contains poems and commentary on social and political issues. Ms. al-Mallohi does not belong to any political group.

2087. According to information received, on 27 December 2009, Ms. al-Mallohi was summoned to Damascus for interrogation by Syrian Arab Republic's State Security (Branch 279) relating to an article she published on her blog. She was immediately detained without charge. Two days later, on 29 December 2009, members of State Security reportedly went to Ms. al-Mallohi's house and confiscated her computer, CDs, books, and other personal effects. She was held in incommunicado detention at an undisclosed location without charge or access to her family for the first nine months of her detention. Her family was allowed to visit her once at Doma prison in Damascus on 30 September 2010.

2088. On 5 October 2010, it was reported that Ms. al-Mallohi had been charged with spying for a foreign country. On 14 February 2011, Ms. al-Mallohi appeared before Damascus State Security Court in a closed trial, and was sentenced to five years of imprisonment for "divulging information to a foreign State." The court did not disclose any evidence nor details of the reason behind the verdict. The State Security Court's verdict is final and there is no possibility of appeal. Since 30 September 2010, other than during her court appearance, Ms. al-Mallohi is being held in solitary confinement in Doma prison.

2089. Concern was expressed that Ms. al-Mallohi was held in incommunicado detention without charge for nine months, sentenced to five years of imprisonment on unclear charges, and now held in solitary confinement because of articles posted on her blog. Further concern was expressed regarding the right to physical and mental integrity of Ms. Tal al-Mallohi.

Urgent appeal

2090. On 30 March 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the **assault and arrest of dozens of human rights defenders and family members of prisoners of conscience** who had gathered at the Syrian Ministry of Interior on 16 March 2011 to petition for the release of all political prisoners.

2091. According to the information received, on 16 March 2011, about 150 individuals gathered outside the Ministry of Interior in Damascus, to present a petition calling for the release of prisoners of conscience and to express disappointment that a significant number of these prisoners were not covered by the 8 March 2011 amnesty adopted to mark the Baath Revolution Day. Most of the individuals involved in the demonstration were human rights defenders and relatives of prisoners of conscience. It is reported that when families started raising pictures of their detained relatives, they were confronted by security services agents armed with batons and individuals in plain clothes who proceeded to violently beat and break up the demonstration. Reportedly children, women and elderly individuals were among those beaten. Demonstrators who tried to flee the assault were reportedly chased down and arrested. An estimated 40 people were arrested at the scene of the demonstration.

2092. It is reported that security services agents subsequently transported a number of the demonstrators, including an unidentified boy in his early teens, to the Mantaqa branch of Military Security. One of these individuals, Mr. Bader Shalah was reportedly hit over his eye with a baton, causing bleeding. Security services agents allegedly interrogated some of these individuals and asked for passwords to their Facebook accounts

2093. On 17 March 2011, a day after the peaceful demonstration was violently dispersed the Syrian authorities interrogated and charged 32 of the demonstrators for alleged violations relating to “weakening national sentiment...” and “deeds committed, writings composed, or speeches held with the intention of inciting sectarian or racial strife or provoking conflict between the religions and the various members of the nation” (Articles 285 and 307 of the Criminal Code). The 32 individuals charged and detained are: Omar Al-Labwani, Riba Al-Labwani, Laila Al-Labwani, Ammar Al-Labwani, Siba Hafiz Hassan, human rights defender Sereen Khouri, Nahid Badawieh, Naret Ibrahim Abdul Karim, Badr Eddin Al-Shallash, Kamal Shaikho member of the Committee for the Defence of Democratic Liberties and Human Rights in Syria (CDF), Suhair Al-Attassi, President of the Attassi Forum, a pro-democracy discussion group, Mohamed Osama Nassar, Saad Jawdat Saeed, Bisher Jawdat Saeed, Ghaffer Hikmat Muhammad, Dana Ibrahim Al-Jawabra, Wafa Mohamed Al-Lahman, Nabil Walid Shurbaji, Fahima (Herveen) Saleh Awsi, a member of the Kurdish Committee for Human Rights, Rayan Kamal Suleyman, Muhammad Dia’ Aldeen Daghmash, Nasr Eddin Fakr Eddin Ahmi, Zokan Nofal, Ali Abdul Rahman Al-Muqdad, Shaher Al-Warea, Hisham Khalid Al-Droubi, Mohammad Hassan Al-Khalil, Nisreen Khalid Hasan, Adel Al-Bunni, Fahed Al-Bassam Al-Yimani, Abdul Al-Razzaq Al-Temmo, Mudar Al-Asimi. These individuals are reportedly detained in the Damascus Central Prison of Adra or Douma Prison for Women where they are alleged to have joined the hunger strike started by a group of 12 prisoners of conscience and human rights defenders on 7 March 2011.

2094. To date, there has been no information concerning the situation of several other family members who were reportedly arrested in relation to the peaceful demonstration. These individuals include: Hussein Al-Labwani, Hannibal Awwad, Mahmoud Ghawrani, Mohammad Adib Matar, Mohammad Darwish, Ghaffar Hikmat Muhammad, Abdul

Rahman Kheto, Kaka Dawood, Mohammad Munir Al-Fakir, Bara Kellizin, Mohammad Al-Katib and Wissam Tarif.

2095. Concern was expressed for the physical and psychological integrity of the abovementioned individuals. Further concern was expressed that their arrest and detention is related to their peaceful activity and the legitimate exercise of their freedom of opinion and expression.

Responses received to communications sent earlier

2096. In a letter dated 29 June 2010, the Government replied to the communication sent on 10 December 2009 regarding Mr. Mustafa Ismail as follows.

2097. The Government of the Syrian Arab Republic thanks you for your concern and appreciates your efforts to monitor human rights violations throughout the world. It is pleased to cooperate with you in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and international norms and standards and in accordance with your mandate as set out in the various Human Rights Council resolutions.

2098. With regard to the information that you have received in respect of Mr. Mustafa Isma`il, we wish to clarify that Mr. Isma`il is a Syrian citizen who enjoys his full rights as guaranteed by the Syrian Constitution and under Syrian law. Under Syrian law, all Syrian citizens are granted their rights to freedom and to engage in lawful activities; in return, they are subject to Syrian laws, which impose penalties on any person who commits an unlawful act.

2099. In view of the above, and in view of the unlawful acts committed by Mr. Isma`il, which are punishable under the Syrian Criminal Code, he was arrested on 12 December 2009 by the competent authorities for investigation. He was subsequently transferred to the Office of the Military Public Prosecutor in Aleppo, with the record of the investigation into his case, where it was decided to institute public proceedings against him on the basis of the documents available and the investigation into two offences, namely:

1. Engaging in acts that would harm Syrian relations with a foreign State, under article 278 of the General Criminal Code;
2. Membership of a prohibited political party, under article 267 of the General Criminal Code.

2100. The case for prosecution and the preliminary investigation file were presented to the military investigating officer in Aleppo, who conducted a judicial investigation into Mr. Isma`il's case and, consequently, decided to remand him in custody for the two offences that he is alleged to have committed. The case remains under consideration.

2101. With regard to the assertion in your letter that Mr. Isma`il was held incommunicado and the concern that you expressed for his physical and psychological health, we wish to reiterate our hope that you take into consideration that most of the sources upon which you rely for information in respect of the Syrian Arab Republic provide you with false information and incorrect facts, and that you attend to those sources accordingly. Mr. Isma`il was not held incommunicado but was treated as other prisoners in the Syrian Arab Republic are treated in accordance with all of the international standards for the treatment of prisoners. We also wish to reassure you with regard to Mr. Isma`il's physical and psychological health that he receives the same medical care in prison as he would if he were not in prison. In prisons, full-time physicians attend to the health of prisoners and provide them with health care and psychological care; any prisoner with a health condition is treated immediately. In this regard, we hope that you will not hesitate to notify us should

you receive information that any harm has been done so that those responsible can be held to account, should it be proven.

2102. Lastly, we wish to emphasize that Mr. Isma`il is a Syrian citizen and is protected by the Syrian Constitution and Syrian laws. He is subject to the judicial procedures set out in Syrian criminal law, which is consistent with all international conventions, charters and standards and with the common practice of most countries of the world. We wish to underscore that should an investigating judge find during the investigation that there is sufficient evidence to charge him and bring him to trial before the criminal court, then Mr. Isma`il will be subject to a fair trial before a fair and impartial court. In addition, we wish to reaffirm that we are committed to continued cooperation with you and to replying to all your questions so that we can achieve our common goals of promoting and protecting human rights and fundamental freedoms.

Observations

2103. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communications of 30 March 2011, 18 February 2011, 9 February 2011, and to three earlier communications sent on 25 November 2010, 11 November 2010, 9 November 2010, 3 August 2009, and 2 February 2009. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2104. The Special Rapporteur would also like to express his ongoing concerns regarding lack of tolerance of dissent, including the use of state of emergency powers by the authorities to punish and silence critics, including bloggers, human rights defenders, political activists, and Kurdish minority rights activists. This includes arbitrary arrests, banning from travelling abroad, and arbitrary imprisonment following trials before the Supreme State Security Court or military or criminal courts which do not comply with international human rights norms and principles on the right to a fair trial.

2105. The Special Rapporteur remains watchful of the situation in the Syrian Arab Republic, and calls upon the Government to fully guarantee the rights of all individuals to exercise their right to freedom of expression and the right to peaceful assembly.

Tajikistan

Allegation letter

2106. On 9 November 2010, the Special Rapporteur sent an allegation letter regarding **increased pressure on independent media in Tajikistan**, including launching of tax inspections of newspapers and publishing houses and blocking of websites.

2107. According to information received, on 19 September 2010, an army convoy was attacked by militants in Rasht Valley, which killed at least 25 Tajik soldiers. Following the attack, several newspapers criticized the Ministry of Defense for the way it handled the situation.

2108. On 25 September 2010, a statement was delivered by representatives of the Ministry of Defence at a news press conference, broadcast on State television channels, which reportedly accused the independent media of attempting to weaken the country's leadership by criticizing the Government's response to recent security challenges, including the event on 19 September 2010.

2109. Since 28 September 2010, tax evasion investigations have been initiated into several newspapers, including Farazh, Negah, Millat and Paykon, as well as private publishing

houses, including Intishor, Mushfiji, and Olia-print. It has been reported that two major newspapers in the country, Farazh and Paykon, have not been published since 13 October 2010, as publishing houses have refused to do so for allegedly “technical reasons”.

2110. Since 29 September 2010, several Tajik and international websites have reportedly been blocked in the country, including www.fergana.ru, www.centrasia.ru, www.avesta.tj, and www.tjknews.com. It has been alleged that these websites have been blocked following a letter from the Ministry of Transport and Communications to all Internet service providers in the country.

2111. On 4 October 2010, the Defence Minister issued a written statement which allegedly accused independent media of biased and one-sided coverage of the 19 September 2010 attack and sympathizing with militants who attacked the convoy. He also reportedly referred to the criminal responsibility that offering support to terrorism may entail.

2112. Concern was expressed that the recent actions mentioned above constitute an attempt to restrict independent reporting and criticism in Tajikistan, thus stifling the right to freedom of expression in the country.

Observations

2113. The Special Rapporteur expresses his regret that the Government has not responded to his communication dated 9 November 2010, and remains concerned about attempts to restrict independent reporting and criticism in Tajikistan. The Special Rapporteur considers response to his communications an important part of cooperation by Governments. He urges the Government to provide detailed information to concerns raised by him.

Thailand

Allegation letter

2114. On 16 April 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an allegation letter concerning the **blocking of websites and the signal of a news station, and the alleged use of excessive force by the security forces during clashes with anti-government protesters that resulted in the killing of at least 21 people.**

2115. According to information received, on 7 April 2010, Prime Minister Abhisit Vejjajiva declared a state of emergency in Bangkok and nearby provinces amid escalating anti-government protests spearheaded by the United Front for Democracy against Dictatorship (UDD), which began in early March.

2116. On 8 April 2010, the Minister Sathit Wongnongtoey of the Prime Minister’s Office reportedly announced that the Government’s Centre for Public Administration in Emergency Situations had successfully blocked the signals of the People’s Television, which is operated by the UDD. The online news portal “Prachatai” (<http://prachatai.com>) was also allegedly blocked by order of Deputy Prime Minister Suthep Thaugsuban. In addition, 35 other websites, which are supportive of the UDD, were also reportedly shut down.

2117. During the clashes on 10 April 2010, live ammunition was allegedly used by security forces against the protesters. At least 21 people were killed, including 4 military, 16 civilians and over 700 persons were injured. Among those killed was a television cameraman with Reuters, Mr. Hiro Muramoto, 43 years old, who died from a bullet wound in the chest.

2118. According to the authorities, the protesters attempted to enter into the 1st Army Regiment compound and this triggered the need of a stronger response and the eventual recovery of the main rally site (Pan Fah Bridge site) from the protesters. We are informed that the authorities have indicated that the use of violence was necessary due to the actions of demonstrators who used violent methods to counter the advance of the security forces at the main rally site.

2119. With regard to the alleged blocking of websites and the signal of People's Television, the Special Rapporteurs reiterated the principle enunciated by Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights (ICCPR) provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (iii) access to or use of information and communication technologies, including radio, television and the Internet.

2120. Additionally, the Special Rapporteurs requested from the Government information on the inquiries into the clashes and their outcomes, on the measures taken to hold those responsible for killings accountable, and on the measures taken to prevent further outbreaks of deadly clashes during protests.

2121. In this respect, the Special Rapporteurs noted that the ICCPR, to which Thailand is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

2122. With regard to the alleged killings from excessive use of force by the security forces, the Special Rapporteurs noted that Article 6 of the ICCPR which requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles"), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5).

2123. With regard to the allegation that the use of excessive force was justified, the Special Rapporteurs drew the attention of the Government to the Basic Principles, Principle 9 which provides that "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

2124. The Special Rapporteur on extrajudicial executions has expounded in detail in his report presented to the Human Rights Council the notions of proportionality and necessity as they apply to the use of firearms. He notes on the one hand, that the applicable standard of necessity is that the resort to this potentially lethal measure must be made "only when less extreme means are insufficient to achieve these objectives". With respect to the use of firearms, the applicable standard of necessity is that the resort to this potentially lethal measure must be made "only when less extreme means are insufficient to achieve these objectives". In general, the way in which law enforcement officials should determine the necessary level of force is by starting at a low level and, in so far as that proves insufficient

in the particular case, graduating, or escalating, the use of force. Force should not normally be the first resort: so far as the circumstances permit, law enforcement officials should attempt to resolve situations through non-violent means, such as persuasion and negotiation. As expressed in the Basic Principles, “They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result” (Basic Principles, Principle 4) If it should become necessary to use force, the level of that force should be escalated as gradually as possible. As a first step, officials should attempt to “restrain or apprehend the suspected offender” without using force that carries a high risk of death — perhaps by physically seizing the suspect. If the use of firearms does prove necessary, law enforcement officials should “give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident” (Basic Principles, Principle 10). On the other hand proportionality deals with the question of how much force might be permissible; proportionality is a requirement additional to necessity. The principle of necessity will, thus, never justify the use of disproportionate force. If all proportionate measures have proved insufficient to apprehend a suspect, he or she must be permitted to escape. (2006 *Report to the General Assembly (A/61/311, para 33-45)*).

2125. The Special Rapporteurs urged the Government to ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7). There must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Superiors and other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts (Principle 19 of the Prevention and Investigation Principles, see also Principle 24 of the Basic Principles) – all the more so, if they ordered the executions.

2126. The Special Rapporteurs took note that the Government has proposed the establishment of a Committee to investigate the causes of death of persons that were killed during the clashes between the Security forces and the protesters. While commissions of inquiry may be a very appropriate measure in the case of inter-communal violence, they are not sufficient. Principle 18 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides that “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.”

Response from the Government

2127. In a letter dated 19 November 2010, the Government responded to the communication sent on 16 April 2010, in which it provided additional information on the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) to clarify the nature and implication of the Emergency Decree, allegations on the closure of media outlets, and the rights of those arrested during the incidents, among others.

The use of Emergency Decree in certain areas of the country

2128. It is the Government’s intention to return to normal legal procedures as soon as possible. Accordingly, since the UDD protests ended, the Emergency Decree has already been lifted in 20 provinces where security agencies are certain that law and order can be maintained through normal measures. The Decree remains in effect in Bangkok and three surrounding provinces as a precautionary measure to enable security agencies to work in a more integrated, effective and expeditious manner to prevent a recurrence of violence.

2129. However, while the overall situation has returned to normalcy since the protests ended in May 2010, there continue to be attempts to instigate disturbances in Bangkok and its vicinity. Hence, it is necessary to remain vigilant.

2130. Be that as it may, the use of the Decree has not affected the ordinary people, whether locals or foreigners, in the conduct of their daily life and businesses. Even in the case of political activities, these have been allowed so long as they are conducted within the bounds of the law. For example, the Decree did not stand in the way of the UDD's peaceful gatherings on 19 September and 10 October 2010 in Bangkok which were attended by several thousands of their supporters.

2131. All in all, the Government, in working to resolve the ongoing political conflict, has always given due respect to the principle of human rights, including civil and political rights. The Prime Minister takes all concerns related to human rights seriously and has recently ensured that there are measures to allow human rights monitors to interview people who have been detained.

2132. Furthermore, as a party to the International Covenant on Civil and Political Rights (ICCPR), Thailand has always been transparent about the exercise of its right of derogation under the Covenant in light of the declaration of a severe emergency situation in certain parts of the country. It has also been observing the letter and the spirit of the Thai Constitution, especially those provisions dealing with freedom of expression, and emphasizing as its core policy the importance of the rule of law and good governance.

The allegations over the detainees under the Emergency Decree

2133. According to the Centre for the Resolution of the Emergency Situation (CRES), no individual is currently being held in custody under the Emergency Decree. Those held following the recent unrest have either already been released or charged in accordance with the Criminal Procedure Code. Currently, a total of 185 persons are being held in prisons, with give being held at the Central Women Correctional Institution, and twelve at youth Observation and Protection Centres – all under the normal judicial procedure. As for those charged and sentenced for violating the Emergency Decree – which carries a maximum penalty of two years' imprisonment or a fine of 40,000 baht, or both – they have been accorded due process of law in accordance with Thai criminal law and procedures.

2134. In any case, the Emergency Decree provides for various safeguards against human rights abuses, such as arbitrary detention, detainees' rights, risk of disappearance, as well as impunity.

2135. On detention, the Emergency Decree provides for an adequate level of judicial oversight. The competent authorities do not possess arbitrary powers in arresting suspects. Section 12 of the Decree stipulates that the authorities must first seek court permission before making an arrest and detention shall not exceed seven days, and that court permission is required for extension of the custody period which can be extended by seven days at a time not to exceed a total period of thirty days. Upon the expiration of such period, if further detention is required, the competent official shall proceed under the normal Criminal Procedure Code. In addition, suspected persons shall not be treated as a convict.

2136. On detention locations, designated locations to be used for detaining suspects under the Decree have always been clearly specified, and the Decree provides that the competent official must file a report on the arrest and detention of suspected persons for submission to the court. A copy of such report shall be deposited at the office of the competent official so that relatives of the suspects may access such reports for the entire duration of the detention. There is therefore no risk of disappearances.

2137. On the rights of detainees, the fundamental human rights of those arrested have always been fully respected and accorded in accordance with the Thai Constitution and within the perimeters of the ICCPR. Torture, cruel or degrading treatment is prohibited by the law. In addition, relatives of suspects and lawyers may visit the suspects.

2138. On impunity, the Emergency Decree does not provide “blanket immunity” for officers operating under it. Under Section 17 of the Decree, an official remains fully liable for any acts that are discriminatory, unreasonable, exceed the extent of necessity or are performed without good faith, and they could also be sued for civil liability in accordance with the law on liability for wrongful acts (Tortious Liability of Officials Act B.E. 2539 (1996)). As officials know that they can be held accountable for abuses and mistreatment, the risk of human rights abuses is minimised. Indeed, Section 17 is not unique to Thailand as similar clauses appear in other countries’ legislation dealing with emergency situation. Moreover, investigations being conducted into the events that occurred, including those carried out by the National Human Rights Commission, will cover the conduct of officials.

2139. The fundamental human rights of those arrested have thus been fully respected in accordance with the Thai Constitution and within the parameters of the ICCPR and other relevant international human rights instruments.

The allegations of the Government closing down the UDD’s satellite television and other forms of media such as community radio stations and newspapers

2140. Thailand respects freedom of the press and restrictions have been applied only to the extent necessary to protect public order by preventing misuse of the media as mediums to spread false information and manipulate and incite violence and hatred among people, which contributed towards the widespread violence as witnessed during April – May 2010 and could lead to further incidents. These have in no way affected the media in their normal dissemination of facts and information.

2141. Restricting expressions to prevent violence through incitement, such as hate speeches, is not uncommon. Several countries in Europe and elsewhere have prohibitions and restrictions for various reasons – some specific to their respective history or belief.

Further clarifications on the nature of the Emergency Decree

2142. The Emergency Decree is a temporary, time-bound measure to address specific concerns. Each time it has been reviewed, it has been extended for months, after which the Cabinet has to consider whether to approve another three-month extension. The Decree is also area-bound in a sense that announcement has to be made where the Decree will be enforced.

2143. The Emergency Decree was promulgated with a view to enabling the competent officials responsible for addressing an emergency situation to act in an integrated and more effective manner.

2144. In normal circumstances, the legal power in dealing with emergency situations is dispersed over different legislations, such as the Constitution, the Criminal Code, the Criminal Procedures Code, the Special Investigation Act and the Anti-Money Laundering Act. This creates a problem in dealing with an emergency situation as responsibilities are given to different agencies and different ministries. But under the Emergency Decree, all the relevant laws are brought together under the same umbrella with a clearly defined chain of command and division of authority and responsibility so that actions could be undertaken in a timely manner. In this regard, powers and responsibilities of the ministers concerned in relation to the emergency situation will be temporarily transferred to the prime minister. The prime minister may therefore decide to delegate the powers in question to one of the deputy prime ministers as deemed necessary. All these have to be identified in a

notification issued by the Council of Ministers. Likewise, measures as provided for under the Emergency Decree which are to be put into force have to be announced. Utmost care is taken to ensure that such measures are as necessary and proportionate, and would not unduly affect the general public.

2145. It should also be noted that as opposed to the Martial Law, the use of the Emergency Decree is under civilian control. It must be announced by the Prime Minister, with approval from the Cabinet, which must be either before the announcement is made or – in the case of compelling emergencies – within three days thereafter.

Allegation letter

2146. On 1 October 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegation concerning numerous arrests of and charges against Ms. **Chiranuch Premchaiporn**, editor of Prachatai, an online media portal that contains news, opinion and a discussion forum, for comments posted by readers on the website. Ms. Premchaiporn is also an advocate for freedom of expression and freedom of the media and is actively involved in the “Citizen Net” network which monitors the state of censorship in Thailand.

2147. According to information received, on 6 March 2009, Ms. Chiranuch Premchaiporn, also known as Jiew, was arrested on the basis of a warrant alleging that she violated articles 14(1), 14(3), 14(5) and 15 of the Computer Crimes Act for having allowed readers to post comments on Prachatai’s online discussion forum that allegedly defamed the King of Thailand. On 31 March 2010, she was arrested again for the same alleged offence, but with the additional charge of violating the *lèse majesté* provision of the Criminal Code (article 112).

2148. On 24 September 2010, Ms. Chiranuch Premchaiporn was arrested at Suvarnabhumi airport in Bangkok upon returning from her trip to Lithuania and Hungary, where she participated in the Internet Governance Forum organized by the United Nations and a conference on Internet freedom organized by Google and the Central European University respectively. At passport control, immigration officers allegedly took her to the immigration office for questioning for two hours, after which she was transported in a police car to Khon Kaen police station, located approximately 450 kilometres from Bangkok. She was allegedly shown an arrest warrant relating to material posted on the Prachatai website in April 2008 which, according to the warrant, violated the same provisions as those listed in the previous warrants.

2149. On 25 September 2010 at approximately 1:00 a.m., Ms. Premchaiporn was released on bail after paying a 200,000 baht fine (approximately USD 6,500). She was required to report to the Khon Khaen Muang district police station every month. Her next mandatory visit to the police station was scheduled on 24 October 2010. Ms. Chiranuch Premchaiporn was awaiting trial for the charges mentioned above, which in total could lead to a 50-year prison sentence.

2150. Serious concern was expressed regarding the numerous charges against Ms. Chiranuch Premchaiporn, as she is being held liable for content that she herself did not write. Further concern was expressed regarding the *lèse majesté* provision of the Criminal Code (article 112) which unduly limits the right of all individuals to peaceful freedom of expression, as communicated to your Excellency’s Government on numerous occasions.

Responses from the Government

2151. In a letter dated 6 October 2010, the Government responded to the communication sent on 1 October 2010 as follows. The above-mentioned matter has been duly forwarded to the concerned authorities for further examination. Thailand, as an open society, upholds the

people's right to freedom of speech and expression as guaranteed by the Constitution. The exercise of such rights, however, must bear in mind considerations regarding national stability and social harmony. Importantly, it has to be in accordance with the law and viewed in a societal context. Views that are disrespectful of the monarchy, or advocate hatred or hostile feelings towards this important national institution, or those which incite hatred or violence are generally unacceptable in the Thai society.

2152. In fact, article 19 (3) of the International Covenant on Civil and Political Rights stipulates that the exercise of freedom of expression "carries with it special duties and responsibilities" and the exercise of this right "may therefore be subject to certain restrictions but these shall only be such as are provided by law and are necessary for respect of the rights and reputation of others". In this regard, the legal proceedings against Ms. Pemchaiporn are in accordance with Thai law. Furthermore, Ms. Pemchaiporn has been and will be accorded due process as provided by the Thai Criminal Code, including the right to fair trial, due opportunity to contest the charges and assistance from her lawyer.

2153. In another letter dated 17 February 2011, the Government informed that the Court has not yet ruled on the case of Ms. Premchaiporn, and further witness hearings are scheduled in September 2011. Therefore, it is important not to prejudge the decision of the Court at this stage. Ms. Premchaiporn has been freed on bail.

Observations

2154. The Special Rapporteur thanks the Government for the replies received to his communications sent during the reporting period. However, he regrets that at the time of the finalization of this report, the Government had not transmitted a response to seven communications sent earlier on 28 August 2009, 16 March 2007, 28 March 2006, 10 November 2005, 7 October 2005, 28 June 2004, and 27 May 2004. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2155. The Special Rapporteur would like to express his ongoing concerns regarding restrictions to the right to freedom of opinion and expression in Thailand, mainly through the Emergency Decree, lese majesté law (as set out in article 112 of the Penal Code), and Computer-related Crimes Act of 2007. Despite his concerns raised in his communication of 16 April 2010, he regrets that access to tens of thousands of websites continues to be blocked on the grounds of national security and breaches of lese majesté law. The Special Rapporteur also expresses his serious concern regarding recent increase in the number of lese majesté cases reportedly being investigated by the police and accepted by the courts, leading to a broader chilling effect on the right to freedom of expression.

2156. While the Special Rapporteur appreciates the replies received from the Government of Thailand to justify the necessity of lese majesté law, he remains concerned that there are insufficient guarantees to ensure that the right to freedom of expression is not unduly and arbitrarily restricted, and that there are disproportionate penalties imposed, both of which leads to a broader chilling effect on the right to freedom of expression in the country, including in the academia. The Special Rapporteur thus urges the Government to consider repealing or amending the problematic provisions to bring them into conformity with international human rights standards on the right to freedom of opinion and expression.

Tunisia

Lettre d'allégation

2157. Le 6 juillet 2010, la Rapporteuse spéciale, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a envoyé une lettre d'allégation concernant un **projet de loi amendant l'article 61 bis du Code pénal tunisien**.

2158. Selon les informations reçues, le 15 juin 2010, la Chambre des députés du Parlement tunisien aurait adopté un projet de loi amendant les dispositions de l'article 61 bis du Code pénal en y ajoutant l'incrimination "des personnes qui établissent, de manière directe ou indirecte, des contacts avec des agents d'un Etat étranger, d'une institution ou d'une organisation étrangère dans le but de les inciter à porter atteinte aux intérêts vitaux de la Tunisie et à sa sécurité économique". Ce crime serait passible d'une peine allant de cinq à vingt ans de prison. Ce projet de loi devrait prochainement être présenté à la Chambre des conseillers avant d'être approuvé par le Président de la République.

2159. Il est allégué que le vote d'une telle disposition viserait à criminaliser les activités des défenseurs tunisiens collaborant avec des organisations internationales et intergouvernementales. Par ailleurs, l'absence de définition de ce que pourrait constituer une atteinte aux intérêts vitaux et à la sécurité économique de la Tunisie pourrait porter atteinte au droit à la liberté d'expression des défenseurs des droits de l'homme. Cet amendement pourrait également entraver l'accès des défenseurs tunisiens aux financements, notamment en provenance de l'étranger.

2160. Des craintes ont été exprimées que l'adoption de ce projet de loi viserait à criminaliser les activités de sensibilisation menées par les défenseurs des droits de l'homme tunisiens et notamment leurs activités de plaidoyer sur la situation des droits de l'homme en Tunisie auprès des organisations internationales et intergouvernementales.

Appel urgent

2161. Le 11 octobre 2010, la Rapporteuse spéciale, conjointement avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint et la Rapporteuse spéciale sur l'indépendance des juges et des avocats, a envoyé un appel urgent sur la situation de M. **Fahem Boukaddous**, journaliste de la chaîne de télévision *Al Hiwar Al Tounisi* et du **site d'information en ligne Al Badil**.

2162. M. Boukaddous a fait l'objet d'un appel urgent envoyé le 12 janvier 2009 par le Rapporteur spécial sur l'indépendance des juges et des avocats, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme. Le Gouvernement de son Excellence a été remercié pour sa réponse en date du 31 mars 2009.

2163. Selon les nouvelles informations reçues, le 6 juillet 2010, la Cour d'appel de Gafsa aurait confirmé la peine d'emprisonnement de quatre ans prononcée en première instance par la Chambre criminelle du Tribunal de première instance de Gafsa à l'encontre de M. Boukaddous, pour « participation à une entente visant à préparer et à commettre des agressions contre des personnes et des biens ». M. Boukaddous n'aurait pu assister au prononcé du verdict en raison de son hospitalisation dans la ville de Sousse pour des problèmes respiratoires. Un nombre d'avocats, journalistes et activistes des droits de

l'homme auraient été empêchés, de manière semble-t-il injustifiée, d'accéder au Palais de Justice de Gafsa.

2164. Il est allégué que les garanties du droit à un procès équitable n'auraient pas été respectées, des atteintes répétées aux droits de la défense ayant notamment été commises selon plusieurs sources. En l'occurrence, les avocats de M. Boukaddous auraient rencontré des difficultés pour s'entretenir avec leur client avant l'audience. Par ailleurs, les justifications médicales apportées à l'absence de M. Boukaddous n'auraient pas été prises en compte, sous le prétexte allégué d'une vacance du Tribunal au-delà du 15 juillet 2010 ; cette absence justifiée aurait empêché M. Boukaddous de pouvoir s'expliquer directement sur les termes de l'accusation.

2165. Le 14 juillet, M. Boukaddous aurait quitté l'hôpital et aurait été incarcéré le lendemain.

2166. Il est rapporté qu'au début du mois de septembre 2010, la santé de M. Boukaddous se serait dégradée en raison du manque de soins médicaux appropriés. M. Boukaddous souffrirait d'exsudation pulmonaire, d'asthme, d'une inflammation de la gorge et de décomposition de ses dents. Les autorités pénitentiaires auraient refusé de transférer M. Boukaddous dans un hôpital.

2167. De sérieuses craintes ont été exprimées quant à l'intégrité physique et mentale de M. Boukaddous en raison du refus des autorités tunisiennes d'apporter des soins médicaux appropriés à celui-ci. Des craintes ont été renouvelées quant au fait que la condamnation en appel de M. Boukaddous soit liée à ses activités non-violentes de promotion et protection des droits de l'homme. Enfin, des craintes ont également été exprimées que les dysfonctionnements précités lors du procès en appel aient compromis le principe du droit à un procès équitable.

Appel urgent

2168. Le 14 janvier 2011, le Rapporteur spécial, conjointement avec le Président-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent concernant **l'exécution d'au moins 21 personnes et l'arrestation massive de nombreux manifestants, journalistes, blogueurs et défenseurs des droits de l'homme, dans le cadre des protestations des mois de décembre 2010 et janvier 2011.**

2169. Selon les informations reçues, le 17 décembre 2010, M. Mohamed Bouazizi, 26 ans, jeune diplômé de l'université, se serait immolé devant le siège des autorités de la ville de Sidi Bouzid, à environ 200 km de Tunis, afin de protester contre la confiscation par la police de sa charrette de fruits et légumes, sa seule source de revenus. Le 2 janvier 2011, à la suite de deux semaines passées en soins intensifs, il aurait succombé à ses blessures. Cet incident aurait déclenché, depuis lors, une vague de protestations contre les conditions de vie, le chômage et la corruption à travers le pays.

2170. Dans ce contexte, les 8 et 9 janvier 2011, les forces de sécurité auraient ouvert le feu sur des manifestants dans les villes de Thala, Kasserine et Regueb, dans le centre de la Tunisie, entraînant le décès d'au moins 21 personnes, chiffre par ailleurs confirmé par les autorités tunisiennes.

2171. Depuis, les manifestations se seraient poursuivies et le pays aurait connu, ces derniers jours, une escalade de la violence. La police aurait lancé des grenades lacrymogènes et tiré à balles réelles pour disperser la foule. Les informations reçues font

également état de nouveaux décès. La police aurait justifié avoir agi en situation de légitime défense face aux attaques dirigées contre des bâtiments publics.

2172. Nous avons également reçu des informations au sujet d'arrestations massives et de descentes nocturnes prenant pour cible des défenseurs des droits de l'homme, journalistes, activistes et blogueurs. Les autorités tunisiennes auraient tenté de limiter la couverture médiatique en bloquant l'accès à internet et en fermant les comptes des cybermilitants.

2173. Parmi ces individus, les blogueurs Hamadi Kloucha, Slim Amamou et Aziz Amami auraient été interpellés. Le rappeur Hamada Ben Amor, connu sous le pseudonyme d' « El general », aurait été arrêté en même temps que ces derniers et libéré le 9 janvier 2011.

2174. De nombreuses personnes auraient également fait l'objet d'actes d'intimidation et de torture.

2175. Des craintes ont été exprimées au sujet de l'escalade de la violence et de l'usage excessif de la force par les forces de l'ordre au cours de ces manifestations, la plupart desquelles auraient été initialement pacifiques.

Observations

2176. Le Rapporteur spécial regrette, au moment de la finalisation du présent rapport, l'absence de réponse à plusieurs de ses communications en date de 2011, 2010, 2009, 2008 et 2007. Il considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits.

2177. Dans un communiqué de presse en date du 14 janvier 2011, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, le Président du Groupe de travail sur la détention arbitraire et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, a exhorté le gouvernement tunisien à contrôler le recours à la force contre des manifestants pacifiques, après que 21 décès ont été officiellement confirmés au cours du weekend du 8-9 janvier. Des organisations crédibles des droits de l'homme ont fait état d'un nombre plus important de décès depuis le début des protestations mi-décembre. Les experts ont également invité le gouvernement à adopter toutes les mesures nécessaires pour prévenir la répétition de tels actes, et sauvegarder et garantir le plein respect des droits de l'homme et libertés fondamentales de ses citoyens, en particulier, leur droit à l'intégrité physique et psychologique, leur liberté d'opinion, et d'expression ainsi que leur droit de réunion pacifique.⁷¹

2178. Le Rapporteur spécial demeure préoccupé au sujet du projet de loi amendement l'article 61 bis du Code pénal tunisien. Il réitère ses craintes quant au fait que l'adoption de ce projet de loi viserait à criminaliser les activités de sensibilisation menées par les défenseurs des droits de l'homme tunisiens et notamment leurs activités de plaidoyer sur la situation des droits de l'homme en Tunisie auprès des organisations internationales et intergouvernementales.

2179. Le Rapporteur spécial remercie le Gouvernement de son invitation à visiter le pays et espère être en mesure d'honorer celle-ci prochainement.

⁷¹ « Les paroles doivent devenir une réalité, le recours excessif à la force doit cesser » - des experts des droits de l'homme des Nations Unies, 14 janvier 2011 : <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=10635&LangID=F>

Turkey

Urgent appeal

2180. On 21 April 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding Mr. **Murad Akincilar**, born in 1962, secretary of the labour union UNIA at Geneva and political refugee in Switzerland.

2181. According to the information received, on 30 September 2009, at 8 a.m., Mr. Murad Akincilar was arrested by police in Istanbul, where he wanted to visit his sick mother. He was held and interrogated at length numerous times in a police lock-up in Istanbul until 4 October 2009. He was then transferred to Metris Prison (Istanbul) and later to Edurne Prison, 300 km north of Istanbul, where he is currently being detained without charges.

2182. Mr. Murad Akincilar has not been provided with any information on the crime he is suspected of, nor has he received an official indictment. This situation renders it difficult for him to defend himself or challenge his detention. It appears that his detention may be based on political motives, since he has published two articles in a journal critical of the Government ("Demokratik Dönüşüm"), and has been politically active in an organisation named "Devrimci Karagât".

2183. In the course of the interrogations at the police in the beginning of October 2009, he was allegedly deprived of sleep on numerous occasions and was a number of times forced to look into extremely bright lights. Due to this treatment, it is reported that Mr. Murad Akincilar is loosing his eyesight because of retinal detachment. He started encountering problems with his eyesight on 11 October, while detained in Metris Prison. However, the responsible officials allegedly refused to grant him medical care. During his transfer from Metris to Edurne Prison over a distance of 300 km he was reportedly shackled with chains; a week after the transfer, his wife could still observe that his legs were swollen and that he bore serious haematoma. On 16 October 2009, Mr. Murad Akincilar went on hunger strike, demanding urgent medical consultation for his eyes, which was eventually granted the same evening. Despite two belated operations on his eyes, he has lost already 65% of his eyesight of his right eye. On 26 March 2010, a further retinal detachment in his left eye was diagnosed and he again underwent surgery.

2184. Concern was expressed regarding the physical and psychological integrity of Mr. Murad. With a view to his rapidly deteriorating eyesight, particular concern was expressed at the conditions of detention and the lack of medical care.

Allegation letter

2185. On 23 June 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of human rights while countering terrorism, sent an allegation letter concerning **continued prosecutions against and sentencing of journalists under the Law to fight terrorism, Act 3713, as amended, (henceforth Anti-Terror Act), in particular article 7 which prohibits "spreading propaganda relating to a terrorist organization"**.

2186. According to information received, on 4 June 2010, Mr. **Irfan Aktan** was sentenced to a year and three months imprisonment for an article he wrote regarding the strategy of the Kurdistan Workers' Party (PKK) entitled "Weather Conditions in the Region and in Qandil: No Solution without Fighting", which was published in Express magazine on 15 October 2009. Mr. Merve Erol, editor of the magazine, was sentenced to a fine of 16,000

Turkish Lira. Both were found guilty of dispersing propaganda material relating to a terrorist organization in violation of article 7(2) of the Anti-Terror Act.

2187. In a separate trial held on the same day, Mr. **Filiz Kocali**, former publisher of *Gunluk*, and Mr. Ramazan Pekgoz, its editor, and Mr. Ziya Cicekci, its owner, were sentenced to seven and a half years in prison each under the same article of the Anti-Terror Act for reports published on 8 and 9 August 2009. These reports allegedly contained interviews carried out in Northern Iraq with Murat Karayylan, the top commander of the PKK.

2188. On 10 June 2010, Mr. **Ragip Zarakolu**, who has been on trial since May 2009 on charges of violation of article 7(2) of the Anti-Terror Act for publishing a novel entitled "More Difficult Decisions than Death" written by Mr. Mehmet Guler, was acquitted. However, at the same trial, Mr. Mehmet Guler was convicted to a fifteen month prison term for "spreading propaganda" of the PKK.

2189. While the Special Rapporteurs welcomed the acquittal of Mr. Zarakolu, concern was expressed that repeated and frequent use of the Anti-Terror Act against journalists whose writings are unfavourable to the Government stifles the right to freedom of opinion and expression in the country. In this regard, the Special Rapporteurs noted that a total of 103 people, including 15 journalists, were arraigned in the first four months of 2010 alone on charges related to the Anti-Terror Act.

2190. With a view to the overly broad application of the term terrorism in the Anti-Terror Act, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his report on the visit to the country in 2006 (A/HRC/4/26/Add.2, paras. 14, 18, 28-33), expressed his concern about prosecutions for acts related to freedom of expression, association and assembly in relation to the notion of terrorism. In this report, he also highlighted that there are elements both in the Anti-Terror Act which may put severe limitations on the legitimate expression of opinions critical of the Government or State institutions, on the forming of organizations for legitimate purposes, and on the freedom of peaceful assembly.

2191. Given the above, the Special Rapporteurs appealed to the Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

2192. In addition, the Special Rapporteurs made reference to Human Rights Council Resolution 12/16, para. 5 o), which calls upon States to refrain from using counter-terrorism as a pretext to restrict the right to freedom of opinion and expression in ways that are contrary to their obligations under international law. Moreover, the Special Rapporteurs wish to draw your Excellency's Government's attention to resolutions of the Human Rights Council (13/26, para. 1) and of the General Assembly (64/168) which reaffirmed that States must ensure that any measure taken to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law.

2193. The Special Rapporteurs urged the Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that effective measures are adopted to prevent the recurrence of these acts.

Response received to a communication sent earlier

2194. In a letter dated 18 March 2011, the Government replied to the communication sent on 7 January 2010, regarding Mr. **Muharrem Erbey** and the **Human Rights Association (Insan Haklari Dernegi – IHD)**. Mr. Erbey is a human rights lawyer, the General Vice-Chairperson of IHD and the Chairperson of IHD's Branch in Diyarbakir Province. The Human Rights Association (**Insan Haklari Dernegi – IHD**) works on, *inter alia*, the right to life and enforced disappearances.

2195. The Diyarbakir Chief Prosecutor initiated an investigation (No.20077997) pertaining to the activities of Koma Civaken Kurdistan (KCK) terrorist organization. As a result of the synchronic operations carried out on 24 December 2004 by the Diyarbakir, Batman, Bitlis, Mardin Siit, Sanliurfa, Surnak and Van Province Police headquarters and Diyarbakir-Silvan district headquarters, 27 people including Muharrem Erbey were taken into custody. It should be noted that these people were immediately before the judge on 25 December 2009.

2196. Contrary to allegations, in 24 hours Muharrem Erbey was brought before the Chief Public Prosecutor, without his statement being taken or being accused of any charges. Muharrem Erbey's statement was taken by the Chief Public Prosecutor and following the Chief Public Prosecutors investigation (No.2007/996) he was heard by the Diyarbakir Heavy Penal Court and taken under detention pursuant to Article 314 of the Criminal Code Law No. 5237 for "being a member of an illegal terrorist organization" and was sent to Diyarbakir D type prison.

2197. On the other hand, in the framework of the pending Chief Public Prosecution's investigation (No. 2007/996), the premises of Human Right Association was searched. 9 hard disks were seized and copies of these disks were given to Serdar Celebi (registered lawyer to Diyarbakir Bar) on 11 January 2011 in accordance with the Chief Prosecutors instruction, in charge of the investigation.

Observations

2198. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communications of 6 April 2011, 23 June 2010 and 21 April 2010. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2199. The Special Rapporteur would like to reiterate his concerns regarding the use of various articles in the Penal Code to prosecute individuals for the expression critical views in relation to the armed forces, minority groups in Turkey, and ongoing criminal prosecutions such as the Ergenekon case. He also reiterates his concerns expressed in his communications regarding the use of anti-terrorism laws, which carry longer prison sentences and results in pre-trial detention orders, to restrict the right to freedom of expression. Moreover, the Special Rapporteur remains concerned at continued blocking of access to websites in Turkey.

Turkmenistan

Urgent appeal

2200. On 1 November 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal concerning an alleged plan to assassinate **Mr. Farid Tukhbatullin**, currently resident in Austria. Mr. Tukhbatullin is the director of the Turkmen Initiative for Human Rights (TIHR), a non-governmental

organisation founded in 2004 and based in Vienna, Austria. The TIHR publishes information and submits reports regarding the human rights situation in Turkmenistan.

2201. According to the information received, on 9 and 11 October 2010, Mr. Farid Tukhbatullin was informed by reliable sources that agents of the Ministry of National Security (MNS) of Turkmenistan were allegedly planning to assassinate him. According to said sources, Ministry officials had discussed assassinating Mr. Tukhbatullin in such a way as not to give rise to suspicion of foul play, such as through an orchestrated “accident” or by inducing heart failure.

2202. The alleged assassination plot had reportedly been linked to an interview given by Mr. Tukhbatullin concerning the TIHR’s assessment of the human rights situation in Turkmenistan. The interview was broadcast on the satellite television channel K+ on 28 and 29 September 2010.

2203. In a possibly related incident, the TIHR’s website was subsequently attacked by an unknown group of hackers and was largely inaccessible for several days following the broadcast of the interview.

2204. It was reported that on 18 October 2010, Mr. Tukhbatullin, along with the founding chairman of the Republican Party of Turkmenistan in exile, Mr. Nurmuhamet Khanamov, were denied registration as participants in the OSCE Review Conference at Hofburg Palace, Vienna. However, On 19 October 2010, the decision was taken to grant Messrs Tukhbatullin and Khanamov admission to the conference, which allegedly prompted the official delegation of Turkmenistan to leave the conference room.

2205. It was reported that the Turkmen authorities have on various occasions attempted to hinder the work of the TIHR, such as through attempting to identify its correspondents within Turkmenistan, whose identities are not disclosed. It was alleged that in June 2010, officials from the MNS visited several schools in Mr. Tukhbatullin’s former home town, and interviewed former classmates, teachers, and friends of Mr. Tukhbatullin’s sons with a view to identifying such correspondents.

2206. It had also been reported that in April 2008, Mr. Tukhbatullin was warned by a Turkmenistani diplomat to “tone down” criticism of the Turkmenistani authorities on his organization’s website, or cease his activities entirely.

2207. Mr. Tukhbatullin, who has worked on environmental and human rights issues in Turkmenistan since 1993, was arrested and imprisoned in Turkmenistan in December 2002, allegedly as a result of his human rights activities. Following his release from prison in April 2003, he left Turkmenistan for Austria, where he was granted refugee status, and founded the TIHR in November 2004.

2208. Concern was expressed that the alleged plot to assassinate Mr. Farid Tukhbatullin may be related to his legitimate and peaceful work in defence of human rights in Turkmenistan. In this connection, serious concern was also expressed for the physical and psychological integrity of Mr. Farid Tukhbatullin and his family.

Observations

2209. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 1 November 2010. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2210. The Special Rapporteur wishes to reiterate his deep concern at the severe restrictions on the freedom of expression in the country, and the suppression of all forms of dissent. He

is seriously concerned by reports of harassment and intimidation of journalists and human rights defenders, particularly after the call made by the President to the Security Ministry to fight those who “defame our law-based democratic state”. The Special Rapporteur urges the Government to guarantee all individuals’ right to freedom of opinion and expression, and to promote an open environment where individuals can express diverse and critical views and opinions without fear of harassment or persecution.

Uganda

Allegation letter

2211. On 22 April 2010, the Special Rapporteur sent an allegation letter regarding the **proposed amendment to the 1995 Ugandan Press and Journalist Act**, which is currently before the Ugandan cabinet.

2212. According to information received, the Press and Journalist (Amendment) Bill 2010 (hereafter the “proposed bill”), if adopted, will amend the 1995 Ugandan Press and Journalist Act. According to the proposed bill, newspapers will be required to submit an annual application to the Media Council to obtain operating licenses. It is further stated that the Media Council can revoke the licence of an outlet if it publishes material deemed to be “prejudicial to national security, stability and unity”, which is “injurious to Ugandan relations with new neighbours or friendly countries”, or causes “economic sabotage”. The Media Council may also deny licenses based on factors such as “social, cultural and economic values of the newspaper”, and “proof of existence of adequate technical facilities”. In addition, although the members of the Media Council are already appointed by the Government, the proposed amendment further stipulates that the Information Minister will nominate its Chairman.

2213. Concern was expressed that the provisions of the proposed amendment will further restrict the right to freedom of expression and the freedom of the press in Uganda.

2214. In particular, the Special Rapporteur expressed concern that the bases on which the licenses of newspapers may be revoked are ambiguous, broadly-worded and subject to abuse. In this regard, he recalled that article 19 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by the Government on 21 June 1995, provides that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Although article 19(3) of the ICCPR provides that the right to freedom of expression may be subject to certain restrictions, the Special Rapporteur highlighted the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, that any law restricting the right must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful. The proposed amendment as it currently stands does not meet these criteria, as it is unclear what kinds of expression may be considered “prejudicial” to national security, stability and unity. Moreover, expression deemed to be “injurious to Ugandan relations with new neighbours or friendly countries” or those that cause “economic sabotage” are not one of the permissible grounds listed under article 19(3) on the basis of which the right to freedom of expression may be restricted.

2215. Moreover, the appointment of the Chairman of the Media Council by the Information Minister raises concerns regarding the independence and impartiality of the body that is mandated to grant or revoke the licenses of newspapers.

2216. Furthermore, the provisions in the proposed amendment which grants the Media Council the authority to deny newspaper licenses based on “social, cultural and economic values of the newspaper” or “proof of existence of adequate technical facilities” may entail that only well-funded media houses which support the official line of the Government will be allowed to publish.

2217. Given these concerns, the Special Rapporteur appealed to the Government to ensure that any proposed amendment to the existing Media Law is in line with the Government’s obligations under international human rights law, in particular with article 19 of the ICCPR.

Allegation letter

2218. On 12 May 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an allegation letter concerning Mr. **Joram Bintamanya**, Mr. **Prosper Businge** and Mr. **Gerald Kankya**, journalists and members of the ‘Twerwaneho Listeners Club’. Twerwaneho (“Let’s Fight for Ourselves”) Listeners Club is a non-governmental organization carrying out human rights advocacy through radio programmes and human rights monitoring.

2219. According to the information received, on 1 April 2010, Prosper Businge was summoned by the police in Fort Portal, interrogated and later released. On 6 April 2010, Mr. Joram Bintamanya and Mr. Gerald Kankya were arrested by the police in Fort Portal and interrogated about statements they allegedly made during a talk show on Better FM; a local radio station. During the talk show they have reportedly requested the Government to release the report into the 2007 death of the former permanent secretary of the Defence Ministry, Brigadier Noble Mayombo. A report by a team appointed by President Museveni has reportedly not been made public.

2220. Mr. Gerald Kankya was released on the same day without charges. Mr. Joram Bintamanya was released on bail the following day, 7 April 2010 and charged with sedition. Since their release, Mr. Bintamanya and Mr. Businge have had to report to the police in Fort Portal on a weekly basis, where they are reportedly intimidated by police officers and warned to abandon their human rights activities. According to the information received, there has been no advancement in their case since April 2010.

2221. Concern was expressed that the arrest and interrogation of Mr. Joram Bintamanya, Mr. Prosper Businge and Mr. Gerald Kankya may be related to their peaceful activities in defence of human rights, in particular their exercise of freedom of opinion and expression. Further concern was expressed regarding the requirement of reporting weekly to the police while the criminal case against them is open, since this may be applied as a means to force them to abandon their human rights activities.

Urgent appeal

2222. On 23 September 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, sent an urgent appeal regarding the arrest and current situation of **Mr. Al-Amin Kimathi**, of Kenyan nationality and Executive Coordinator of Muslims Human Rights Forum (MHRF), and **Mr. Mbugua Mureithi**, of Kenyan nationality and a human rights lawyer. Mr. Al-Amin Kimathi has worked to expose and document human rights violations, arbitrary detention and unlawful renditions in the context of counter-terrorism operations in the East and Horn of Africa. Mr. Mbugua Mureithi represents the families of Kenyan suspects transferred to Uganda on allegations of involvement in the 11 July 2010 bombings in Kampala.

2223. According to the information received, on 16 September 2010, the Ugandan police arrested the two Kenyan human rights defenders at the Entebbe International Airport. Both men were travelling to Kampala for the court hearing of Kenyan suspects arrested in connection with the bombings that killed 70 people in Kampala on 11 July 2010.

2224. According to reports received, the two human rights defenders were transferred to the Rapid Response Unit headquarters in Kireka, a suburb of Kampala, where they were reportedly held incommunicado and had no access to a lawyer.

2225. It had been reported that on 18 September 2010 Mr. Mbugua Mureithi was released from police custody in Kampala and immediately expelled to Kenya. Mr. Al-Amin Kimathi was reportedly held incommunicado at the Ugandan police's Rapid Response Unit Headquarters in Kireka, Kampala, without charges or access to legal representation, until 21 September. On this date, it had been reported that Mr. Al-Amin Kimathi was brought before a judge and remanded to the Luzira Maximum Security Prison on charges of murder and attempted murder as well as terrorism-related charges in connection with the bombings that took place in Kampala in July 2010.

2226. Due to their arrest, detention and, in the case of Mr. Mureithi, expulsion, the two men had not had a chance to meet with their clients, who are charged with offences including murder and terrorism, punishable by death under Ugandan law. The court case involving their clients had continued in their absence.

2227. Concern was expressed at the arrest of Mr. Al-Amin Kimathi and Mr. Mbugua Mureithi and at allegations received that their arrest could be linked to their work, respectively as human rights lawyer and in denouncing and documenting unlawful practices by the authorities in counter-terrorism operations. Further concern was expressed about allegations indicating that Mr. Al-Amin Kimathi had no access to a lawyer since the time of his arrest and until he was remanded to the Luzira Maximum Security Prison.

Allegation letter

2228. On 1 February 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an allegation letter concerning the death threats against and subsequent murder of **Mr. David Kato**. Mr. Kato was the advocacy officer of Sexual Minorities Uganda, a coalition of lesbian, gay, bisexual and transgender (LGBT) human rights organizations working to promote the human rights of the LGBT community in Uganda.

2229. According to the information received, on 26 January 2011, at approximately 13:00 a man entered the home of David Kato and hit him twice on the head. The man then fled the scene by car. Mr. Kato died on his way to Kawolo hospital as a result of injuries sustained during the beating.

2230. In recent months Mr. Kato had received numerous death threats in connection with his work on LGBT rights, and especially following the publication of an article entitled "Hang them" in Rolling Stones, a local newspaper. The article provided names, addresses and photos of members and perceived members of the LGBT community in Uganda. Mr. Kato's photo was featured on the front cover. Although the motives of his attacker have not yet been clearly determined, Mr. Kato is a well-known public figure and face of the LGBT movement in Uganda, and has long been considered a prime target for anti-gay vigilantism.

2231. According to information received, the murder of Mr. Kato forms part of an increasing trend of attacks and intimidation against human rights defenders, particularly those working on LGBT issues. The attacks take place against a background of media reports which appear to incite discrimination, hostility and violence, as well as proposed

legislation to further entrench the criminalization of homosexuality and to provide for increased criminal penalties against persons found to be homosexual.

Observations

2232. The Special Rapporteur regrets that at the time of finalizing the present report, the Government of Uganda has not responded to the communications sent during the reporting period, and has not responded to any of the 8 communications sent earlier. He considers response to his communications an important part of cooperation by Governments, and urges the Government to respond to concerns raised by him and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

2233. The Special Rapporteur reiterates his concern about the situation of the right to freedom of opinion and expression in Uganda, including the proposed Press and Journalists (Amendment) Bill, as conveyed in his communication of 22 April 2010. He urges the Government to respond to the concerns expressed in his communication and to ensure that any new legislation which may restrict the right to freedom of expression is in full compliance with international human rights standards.

Ukraine

Urgent appeal

2234. On 21 May 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding **Mr. Andrey Fedosov**, a human rights activist and member of the non-governmental organization 'Uzer' (Ukrainian organization of users of psychiatric care), which monitors conditions in psychiatric institutions in the Crimea.

2235. According to the information received, during the week of 19 April 2010, Mr. Fedosov and his organization, Uzer, monitored the living conditions in six public psychiatric hospitals in the Crimea. They found the conditions in three of these institutions, namely the Crimea Republican Psychiatric Hospitals No. 2 and 4, and City Psychiatric Hospital No. 3 in Fedosia so poor that the NGO asked the prosecutor's office to initiate investigations. On 25 April 2010, Mr. Fedosov announced on his Facebook page his intention to file a complaint with the prosecutor's office regarding conditions in the three psychiatric institutions mentioned. On the same day, he received a phone call from an individual who identified himself as Nikolai Vasilievich, warning him not to make his findings public and threatening that his life could be in danger.

2236. On 11 May 2010, Mr. Fedosov was attacked and beaten by several unknown assailants in Evpatoria, where Uzer was preparing to host a workshop. Mr. Fedosov sustained minor injuries and was briefly hospitalized in the evening of 11 May 2010. Mr. Fedosov has reported the threats to the prosecutor's office.

2237. Concern is expressed that the threats and attack against Mr. Andrey Fedosov may be connected to his peaceful activities in defence of human rights, in particular his activities to monitor conditions in psychiatric institutions in Ukraine. In light of the threats and attack, further concern is expressed for the physical and psychological integrity of Mr. Fedosov.

Urgent appeal

2238. On 3 December 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding an attack against **Mr. Timur Lysenko and Ms. Anastasia Medco**, along with other members of the

organisations Insight, Fulcrum, and the Visual Cultural Centre in Kiev, Ukraine. Insight is an organisation that works to improve the lives of people who identify themselves as part of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Ukraine. The Visual Cultural centre is a platform for the integration of contemporary artistic practices and scientific disciplines within the academic field.

2239. According to the information received, on 20 November 2010, Insight organized a candlelight vigil, film exhibition and discussion on transgender issues, in cooperation with the Visual Cultural Centre, to promote the Transgender Day of Remembrance held in memory of those who have been killed due to anti-transgender violence in Ukraine.

2240. While the film was being screened, a group of ten men wearing masks reportedly attempted to enter the Visual Cultural Centre by force; however, they were denied entrance by the organizers of the event including Mr. Timur Lysenko, the coordinator of the transgender programme of Insight. The masked men consequently attacked and beat Mr. Lysenko. Furthermore, before fleeing, the intruders reportedly also sprayed tear gas at those present, severely injuring Mr. Lysenko and Ms. Anastasia Medco, a representative of the NGO Fulcrum, among others. It is reported that Mr. Lysenko was subsequently hospitalised and diagnosed with internal injuries and facial chemical burns.

2241. Numerous complaints had reportedly been lodged with the police regarding the attack which, it is reported, was characterised by the police as “hooliganism”. The alleged victims, however, claim that it bears the hallmark of a planned attack with the intention of disrupting an LGBTI event, and have thus urged the police to characterise the attack as a hate crime. The police, however, have reportedly refused to do so.

2242. Concern was expressed that the attacks against Mr. Timur Lysenko and Ms. Anastasia Medco may be related to their legitimate and peaceful work in defence of human rights, particularly with regard to the LGBTI community in Ukraine. Further concern was expressed that these acts, if confirmed, would reflect a context of increasing violence and other forms of harassment against LGBTI organisations in Ukraine.

Response from the Government

2243. In a letter dated 21 February 2011, the Government replied to the communication sent on 3 December 2010 by transmitting information from the Ministry of Internal Affairs of Ukraine with regard to the official inquiry into the report of bodily injury sustained by Ms. A.A. Medko and Mr. T.V. Lysenko, as follows.

2244. It has been established that on 20 November 2010, in the building of the Visual Culture Research Centre, which is located on the premises of the Kyiv-Mohyla Academy (No. 2, Skovoroda Street), Mr. T.V. Lysenko, manager of the non-governmental organization “Insight”, organized a candlelight vigil, a film screening and a discussion to commemorate the day of remembrance of victims of violence against transsexuals in Ukraine.

2245. Following the film screening, some 10 youths wearing black clothing and masks gathered outside the Centre and attempted to enter the building using force. Two of the participants in the event, Ms. A.A. Medko and Mr. T.V. Lysenko, attempted to restrain them at the entrance door, as a result of which Ms. Medko was punched in the face and Mr. Lysenko in the stomach.

2246. On 20 November 2010, Mr. T.V. Lysenko, Ms. A.A. Medko, D.A. Pichakhchi and D.S. Marchika presented themselves at the Podol District Department of the Main Directorate of the Ministry of Internal Affairs in the city of Kyiv to report that they had sustained bodily injury during the struggle with the unidentified persons at the Visual Culture Research Centre. The applicants were recommended to undergo a forensic medical

examination in order to establish the degree of seriousness of the bodily injuries sustained and were advised of the relevant procedure; however, they did not present themselves for such an examination.

2247. A police investigation team visited the scene of the incident to survey the site and to gather evidence.

2248. Citizens who had been on the premises of the Kyiv-Mohyla Academy in their free time and the security guards of the institution reported when interviewed that they had not seen any suspicious persons, nor had they been aware of any disturbances.

2249. It was established that arrangements for access to the premises of the Kyiv-Mohyla Academy were poor and that the entry of visitors was not controlled.

2250. As the result of consideration of the reports filed by the applicants with the Podol District Department, a decision not to institute criminal proceedings was issued on the basis of article 6 (Circumstances precluding criminal proceedings), paragraph 2, of the Code of Criminal Procedure of Ukraine and the applicants were notified accordingly. Efforts to establish the identity of the persons reported by the applicants to have committed acts of criminal mischief were unsuccessful.

2251. The decision issued by the office of the procurator for the Podol District of the city of Kyiv is considered to be justified and has been left unchanged.

Observations

2252. The Special Rapporteur thanks the Government for the response to the communication sent on 3 December 2010, but regrets that the Government of Ukraine has not responded to the communication sent on May 2010. He considers response to his communications an important part of cooperation by Governments, and urges the Government to respond to concerns raised by him and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

United Arab Emirates

Urgent appeal

2253. On 16 February 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Chair-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning an alleged arbitrary detention and risk of torture and ill-treatment of Mr. **Hassan Mohamed Al Hamadi**, a human rights defender who expressed his support for Egyptian protesters.

2254. According to the information received, on 4 February 2011, Mr. Hassan Mohamed Al Hamadi, a 52 year old human rights defender was arrested following a speech he made in support of the demonstrations in Egypt.

2255. Mr. Al Hamadi is an active member of the Teachers Association in the United Arab Emirates and a researcher on the occupied Palestinian territory. He was also a Vice-Chair of the Sharjah Educational Zone for 25 years, receiving a number of prizes. In 2007, he was fired from this position due to his calls for reform in the United Arab Emirates and his opinions regarding the question of the occupied Palestinian territory. Mr. Al Hamadi is also a member of the "Association calling for reform" (Jamiat Dawat Al Islah) which aims to institute reforms and enhance civil and political rights in the United Arab Emirates. According to the information received, Mr. Al Hamadi had previously been arrested in

December 2008, while participating in the organization of a conference in protest at the events occurring in the Gaza strip.

2256. It is reported that in the hours preceding his arrest dated 4 February 2011, during the midday prayers at a mosque in Khor Fakkhan, Sharjah, Mr. Al Hamadi discussed the recent demonstrations against President Hosni Mubarak's regime in Egypt. On that occasion, he expressed support with the demonstrators in Tahrir square and other Egyptian cities calling for democratic change in the country.

2257. As a result, on 4 February 2011, at 7:00 p.m., a number of police agents from Khor Fakkhan and five members of the State Security Forces in plain clothes arrested Mr. Al Hamadi in the absence of an arrest warrant. For three days, Mr. Al Hamadi was held incommunicado in a solitary confinement at the police station of Khor Fakkhan. According to the information received, Mr. Al Hamadi was allowed one call to his family on 6 February 2011, during which he briefly explained his whereabouts and that he was soon going to be transferred.

2258. In the morning of 9 February 2011, Mr. Al Hamadi was transferred to the headquarters of the State Security in Abu Dhabi. It is reported that Mr. Al Hamadi has not been officially charged nor has he been informed of the reasons justifying his detention. Mr. Al Hamadi has had no access to a lawyer or family visits. Given that Mr. Al Hamadi suffers from diabetes, concerns are expressed at the fact that he might not have access to prescribed medicine.

Observations

2259. The Special Rapporteur regrets that the Government of the United Arab Emirates has not responded to the communication sent on 16 February 2011, and to an earlier communication sent on 15 February 2010. He considers response to his communications an important part of cooperation by Governments, and urges the Government to respond to concerns raised by him and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

Uzbekistan

Allegation letter

2260. On 11 May 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent a letter of allegation concerning the sentencing of **Mr. Maxim Popov**, psychologist, founder and director of the non-governmental organization Izis, founded by young medical professionals which works on HIV/AIDS prevention. Izis has also implemented HIV prevention activities, including under contracts with UNICEF, UNFPA and UNAIDS.

2261. According to the information received, Mr. Maxim Popov was arrested in January 2009 and convicted in July 2009. His conviction was publicly disclosed only at the end of February 2010. Mr. Popov was sentenced to 7 years imprisonment for charges which included theft by embezzlement, concealment of foreign currency, tax evasion, inducing minors to antisocial behaviour, indecent assault without violence against a minor and inducing engagement in the use of narcotic drugs or psychotropic substances.

2262. It is believed that Mr. Popov was convicted in connection with writing and distributing HIV/AIDS prevention materials. Mr. Maxim Popov is the author of the brochure "HIV and AIDS today", a publication funded by UNAIDS and UNICEF. He was

also convicted for distributing HIV prevention materials published by UNAIDS and other UN agencies to adolescents that explicitly refer to drug use, sex work and homosexuality.

2263. Concern was expressed that the arrest and sentencing of Mr. Maxim Popov may be related to his peaceful activities in defence of human rights, in particular his work on HIV/AIDS prevention

Response from the Government

2264. In a letter dated 30 June 2010, the Government responded to the communication sent on 11 May 2010 as follows.

2265. IZIS, a voluntary organization, was registered in 2003 with the Tashkent Justice Department as a legal entity, with Maxim Popov, an Uzbek national, as director. The organization's basic aims were to work on problems relating to the education, health and social protection of children and to assist in the social integration of the aged, the poor or other vulnerable sections of society.

2266. In accordance with article 21 of the Non-State Non-Commercial Organizations Act, the Tashkent Justice Department, as the registering body, carried out checks on IZIS in 2008 to ensure that it was carrying out its statutory aims and purposes and acting in accordance with the law. The checks showed that the organization conducted its activities under agreements concluded with a number of international organizations, including the local office of the foreign non-governmental organization Population Service International (PSI), and with United Nations agencies in Uzbekistan, such as the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF). In partnership with these organizations, IZIS carried out a wide variety of projects, aimed largely at injection-drug users and persons living with HIV.

2267. In the course of the verification process, it was found that the requirements of the statute had been breached and that there had been violations of Uzbek law, some of them of a criminal nature.

2268. In order to avoid untoward consequences and to take the proper legal action against IZIS, the materials of the verification process were handed over to the public prosecutor's office.

2269. According to information provided by the law enforcement agencies, criminal charges were brought against IZIS and, once the preliminary investigation had been completed, the case was transferred to Chilanzar District Criminal Court.

2270. On 9 June 2009, the Chilanzar District Criminal Court found Maxim Vladimirovich Popov, the director of IZIS, guilty. It sentenced him to seven years' deprivation of freedom and stripped him of the right to hold any office involving the direction of an organization or economic administration for two years.

2271. In view of the above, and given the evidence of a number of breaches of the statute and the law in the activities of IZIS, the Tashkent Justice Department, as the registering body, applied to the Tashkent Civil Court for IZIS to be wound up. This application was granted on 30 September 2009.

2272. In accordance with the Court's decision of 29 October 2009, the Central Administrative Board of the Tashkent Justice Department adopted the decision to terminate the activities of IZIS and to remove it from the register as a legal entity.

The case of Maxim Popov

2273. Maxim Vladimirovich Popov, an Uzbek national and executive director of the voluntary organization IZIS, was found guilty by the Chilanzar District Criminal Court on 9

June 2009 of committing offences under articles 167, paragraph 3 (a); 178, paragraph 2 (a) and (c); 184, paragraph 3; 127, paragraph 3 (b) and (c); 129, paragraph 1; 274, paragraph 2 (c); and, in accordance with articles 45, 59 and 61 of the Criminal Code, was sentenced to seven years' deprivation of freedom and stripped of the right to occupy any office relating to the direction of an organization or economic administration for two years. This sentence was upheld by the Tashkent Criminal Court, Appeal Division, on 14 July 2009.

2274. Popov's criminal activities did not end there. Knowing that the rent of the IZIS office was paid for the period from January to December 2008 under the tripartite agreement, at a cost of \$700 a month, Popov, acting in collusion with Kostyuchenko and in abuse of his official position, claimed \$200 a month for the office rental for the period January-December 2008, with no justification, thus embezzling the grant resources entrusted to him in the amount of 802,000 sum.

2275. Over the period 4 June 2008 to 11 December 2008, Popov misappropriated material goods placed in his charge, in the form of 990 Shield contraceptives, valued at 47,900 sum, purchased with the funds provided by UNDP, 24 T-shirts worth 132,000 sum and 263 vouchers worth 15,100 sum provided by the UNICEF office, at a total value of 193,100 sum.

2276. Moreover, in pursuance of his vile beliefs, which led him to entice young people into using narcotic drugs and psychotropic substances and to encourage an antisocial and amoral way of life by acting on their unformed minds and outlook, Popov distributed in Uzbek educational establishments attended by schoolchildren and students engaging in academic, sporting or communal activities a book that promoted narcotic drug use and antisocial behaviour among the young over the period 2006–2007. The book was entitled *Healthy Lifestyles. Teacher's Guide XXI*, 200 copies of which he had received under the contract with PSI. Popov was well aware of the nature of the book's contents.

2277. Knowing what the book contained, Popov deliberately distributed this book with a view to the promotion of depraved acts by persons whom he knew to be under 16. The book contained texts instructing young people in sexual activities and propaganda for homosexuality, prostitution and pornographic images among young people, including those attending educational institutions in Uzbekistan.

2278. Popov's guilt in respect of the offences in question is confirmed by witness statements, expert conclusions, checks, inventories, receipts and transfers, inspection and confiscation reports using material evidence, bills and other records required for a criminal case. The Supreme Court is not in possession of any information relating to the use of impermissible investigation methods. The sentence imposed on Popov has now become enforceable.

Allegation letter

2279. On 28 May 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegation concerning the situation of **Ms. Salomata Boimatova, Ms. Zoe Yangurazova, Ms. Gavkhar Ismoilova, Ms. Elena Urlaeva, Ms. Tatyana Dovlatova and Messrs. Rasulzhon Tadzhibaev, Akromkhodzhe Mukhitdinov, Vladimir Khusainov and Anatolii Baraksin**, members of the Human Rights Alliance of Uzbekistan, as well as of **Mr. Bakhodyr Namazov**, leader of the organization Committee of Prisoners of Conscience.

2280. According to the information received, on 12 April 2010, five policemen in plain clothes allegedly forcibly entered Ms. Dovlatova's house. They asked her to follow them to the Khamzinsky police department in Tashkent. Following her refusal, they came back later the same day and allegedly searched her house. It is further alleged that during the house

search, which was conducted without a search warrant, the police officers tried to forcefully bring her to the police station.

2281. On 13 May 2010, Ms. Boimatova, Ms. Yangurazova, Ms. Ismoilova, Ms. Urlaeva and Messrs. Tadzhibaev, Mukhitdinov, Namazov and Baraksin were allegedly prevented from leaving their houses to attend a commemoration of the 2005 Andijan events by officers of the Special Forces. It is also alleged that Ms. Dovlatova and Mr. Khusainov were prevented from reaching the place where the demonstration was being held by police officers.

2282. Concern was expressed the acts of intimidation against Ms. Boimatova, Ms. Yangurazova, Ms. Ismoilova, Ms. Urlaeva, Ms. Dovlatova and Messrs. Tadzhibaev, Mukhitdinov, Khusainov, Namazov and Baraksin might be directly related to their peaceful activities in the defense of human rights.

Response from the Government

2283. In a letter dated 11 August 2010, the Government responded to the communication sent on 28 May 2010 as follows. In respect of the allegations that special service officers prevented Ms. T. Davlatova, Ms. S. Boimatova, Ms. Z. Yanguzarova, Ms. G. Imoilova, Ms. E. Urlaeva, Mr. R. Tadzhibaev, Mr. A. Mukhitdinov, Mr. V. Khusainov, Mr. A. Baraksin and Mr. B. Namazov from leaving their houses to take part in a demonstration on 13 May 2010, we would inform you that there were no demonstrations in the city of Tashkent on that day.

2284. No procedural or operational exercises were carried out by the Tashkent law enforcement agencies in respect of the individuals mentioned on 13 May 2010.

Criminal proceedings against Ms. T. Davlatova

2285. At 9 a.m. on 8 January 2010, Ms. T. Davlatova and Ms. N. Dzhurabaeva were involved in a brawl outside the Aviasozlar Market branch of the National Bank of Uzbekistan on Sholokhov Street; both the individuals concerned received bodily injuries. The forensic medical report concluded that the bodily injuries to Ms. T. Davlatova and Ms. N. Dzhurabaeva were "light".

2286. On 21 January 2010, the Khamzinsk district internal affairs department investigating agency brought proceedings under article 277, paragraph 1, of the Criminal Code against Ms. N. Dzhurabaeva in respect of the above events. The procedural action taken in the case produced evidence incriminating Ms. T. Davlatova.

2287. On 6 April 2010, in the presence of a lawyer, Ms. Davlatova was informed of the decision to charge her as a suspect. Ms. Davlatova declined to sign an acknowledgement that she had been shown the decision and left the investigator's office. Subsequently, she did not react to repeated summonses to report to the district internal affairs department.

2288. An order was issued for suspect Ms. T. Davlatova to appear before the district internal affairs department. On 12 April 2010, the investigative task force went to her place of residence to enforce this.

2289. On the officers' arrival, Ms. T. Davlatova categorically refused to open the door, threatening to release a dog, and refused to go to the district internal affairs department. The investigative task force drew up a report and, in the presence of neighbours, took a video film of Ms. Davlatova's actions. No search was made of Ms. Davlatova's place of residence.

2290. On 15 April 2010, officers of the Khamzinsk internal affairs department again went to suspect Ms. T. Davlatova's place of residence to enforce a new order issued by the

investigator for her to appear. However, no one was there. On inquiring of the neighbours, it was ascertained that Ms. Davlatova had not been to the house recently and they did not know where she was.

2291. On the same day, the investigating agency of Khamzinsk internal affairs department charged Ms. Davlatova in absentia under article 277, paragraph 1, of the Criminal Code and declared her a wanted person (pretrial restraining order in the form of travel restraints). Criminal case was brought under article 364, paragraph 2 (1), of the Code of Criminal Procedure, in respect of absence of the suspect. Ms. Davlatova was arrested on 27 May 2010; inquiries have now been reopened and the necessary procedural action is being taken.

Urgent appeal

2292. On 15 December 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the arrest and detention of Ms. **Gulshan Karaeva** and Mr. **Nodir Akhatov**. Ms. Karaeva and Mr. Akhatov are members of the Karshi branch of the “Human Rights Society of Uzbekistan” (HRSU).

2293. According to the information received, on 25 November 2010, Ms. Karaeva and Mr. Akhatov were arrested while observing a demonstration outside the building of the National Security Service (SNB) in Karshi. It is reported that the demonstration, which began at approximately 10:00 a.m., was organised by a group of Muslim women in protest over the alleged mass arrests of their children on 16 November 2010.

2294. At approximately 11:00 a.m., the protest was reportedly interrupted by a convoy of SNB officers, arresting a number of participants in the demonstration, as well as Ms. Karaeva and Mr. Akhatov, all of whom were subsequently brought to the Karshi City Police Department, where they were subjected to interrogation until approximately 7:00 p.m. It is alleged that during their interrogation, police officers attempted to force Ms. Karaeva and Mr. Akhatov to admit involvement in organising the protest, reportedly claiming that some of the participants in the demonstration had stated that this was the case. Ms. Karaeva and Mr. Akhatov were subsequently released without charge; however, it is alleged that the police officers issued a threat to both individuals and their families, warning them to “calm down”.

2295. Subsequently, on 27 November 2010, Ms. Karaeva and Mr. Akhatov were reportedly summoned to the Prosecutor’s office to act as witnesses. However, it is reported that upon arrival, they were instead subjected to further interrogation concerning their alleged involvement in organising the demonstration. Having been interrogated throughout the day, Ms. Karaeva and Mr. Akhatov were reportedly allowed to leave after Ms. Karaeva fell ill due to blood pressure problems.

2296. Concern was expressed that the arrest and detention of Ms. Gulshan Karaeva and Mr. Nodir Akhatov may be related to their peaceful and legitimate work in defence of human rights. Taking into account the threats allegedly issued against them, concern was also expressed for the physical and psychological integrity of Ms. Karaeva, Mr. Akhatov, and their families.

Response from the Government

2297. In a letter dated 14 January 2011, the Government responded to the communication sent on 15 December 2010 as follows.

2298. On 25 November 2010, on the basis of a report by staff of the Karshi municipal internal affairs division about the organization of an unauthorized demonstration beside the

administrative building of the provincial national security services division, the following persons were asked into the internal affairs office of Karshi municipal internal affairs division: G. Karaeva, L. Bekmurodova, R. Shodmonova, D. Khodzhieva, B. Boltaeva and N. Akhatov.

2299. Ms. L. Bekmurodova, Ms. R. Shodmonova, Ms. D. Khodzhieva and Ms. B. Boltaeva explained that they had arrived at the provincial national security services division building at 10 a.m. on 25 November 2010 to receive permission from the investigator to meet their relatives who were being detained in connection with a criminal case. At that point, Ms. G. Karaeva and Mr. N. Akhatov came up to them and offered to help them free their relatives from custody if they agreed to participate in a demonstration beside the provincial national security services division building. Then G. Karaeva and N. Akhatov began noisily to attract the attention of people around. Ms. G. Karaeva and Mr. N. Akhatov, in their explanations, categorically denied taking part in an attempt to organize a demonstration, saying that they were near the provincial national security services division building purely by chance, and that the women there that day were slandering them, saying that they were somehow trying to organize an unauthorized demonstration.

2300. During the interview, the city procurator officially cautioned Ms. G. Karaeva and Mr. N. Akhatov that holding an unauthorized demonstration was prohibited and an offence under the law.

2301. G. Karaeva and N. Akhatov were not detained, and law enforcement officers did not commit any unlawful acts against them.

Observations

2302. The Special Rapporteur thanks the Government for the responses provided to his communications dated 30 June 2010, 11 August 2010 and 14 January 2011.

2303. The Special Rapporteur remains seriously concerned at the situation of journalists and human rights defenders in Uzbekistan, including reports of acts of intimidation, arbitrary arrest, and imposition of disproportionate penalties following unfair trials. He urges the Government of Uzbekistan to promote an environment that is conducive to the expression of diverse views and opinions and to guarantee that journalists and human rights defenders can carry out their legitimate work without fear of persecution or harassment.

Vanuatu

Allegation letter

2304. On 5 November 2010, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders regarding the situation of Ms. Esther Olul and her family. Ms. Olul lives with her family in the Cook barracks of Vanuatu Mobile Forces (VMF) located in the Anabrou neighborhood in Port-Vila. She is employed in Bougainville's high school.

2305. According to the information received, on 29 March 2009, Ms. Olul reportedly witnessed the killing of Mr. John Bule, a prisoner who had escaped from the prison of Port-Vila, by VMF officers inside the Cook barracks. According to the coroner report's, Mr. Bule "died as a result of complications of injuries sustained in the setting of blunt force trauma... The deceased suffered at least 32 different apparent injuries to his head, chest, abdomen, right upper limb, left upper limb, right lower limb, left lower limb and back".

2306. On 9 December 2009, Mr. Selwyn Olul, Captain of VMF and husband of Ms. Olul, was warned by his superior Commander Willy Vira, acting reportedly on orders from Police Commissioner Joshua Bong, that if his wife was to give testimony to the Supreme

Court during the trial concerning Mr. Bule's death in March 2010, they could both end up in jail as a reprisal. Despite these alleged threats, Ms. Olul took the decision to deliver her testimony to the court in March 2010.

2307. On 1 January 2010, Mr. Olul received his transfer order to Luganville, on Santo Island. He moved on 25 January, expecting his family to follow him shortly thereafter. Upon arrival, he found that the quarters made available to him and his family were suitable for a single person only.

2308. In March 2010, Ms. Olul testified before the Supreme Court that she witnessed VMF officers beating Mr. John Bule to death.

2309. On 26 April 2010, Ms. Olul sent a letter to the Police Commissioner Joshua Bong, complaining about her situation. The letter was left unanswered.

2310. On 7 June 2010, the non-governmental organization Transparency Vanuatu, acting on behalf of Ms. Olul, sent a letter to Police Commissioner Joshua Bong, calling him to "reconsider the decision of the transfer of Captain Olul as it has caused an adverse impact on the complainant's family". A follow-up letter was sent on 29 July 2010. Both letters were left unanswered.

2311. On 30 August 2010, around 6 p.m., a military truck nearly hit Ms. Olul inside the Cook barracks. Ms. Olul, shocked, was admitted to hospital where she stayed for three days.

2312. On 24 September 2010, Mr. Olul was instructed by Officer James Aru to tell his wife to leave the barracks, which she refuses to do as she is entitled to marital housing since the allowance is deducted from her husband's wages.

2313. Because of this situation, the health situation of Ms. Olul has seriously deteriorated. She was reportedly admitted to hospital for three weeks due to stress-related heart problems, and needs to take medicine. Ms. Olul and her children are ostracized within the barracks' community. In addition, Ms Olul's eldest son, who works as an ambulance driver, has reportedly been denied access to the VMF barracks. It is finally alleged that Ms. Olul's quarters in the barracks are not being maintained, despite Ms. Olul paying all her bills. In particular, the water pipes are leaking, leading to an increase in water bills.

2314. Concerns were expressed that the aforementioned acts of intimidation and harassment against Ms. Olul and her family, including the transfer of her husband, may be in reprisal for her testimony. Further concerns are expressed for the physical and psychological integrity of Ms. Olul and her family.

Observations

2315. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 5 November 2010. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

Venezuela (Bolivarian Republic of)

Llamamiento urgente

2316. El 1 de abril de 2010, el Relator Especial, junto con el Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria, enviaron un llamamiento urgente señalando a la atención del Gobierno la información recibida en relación con el Sr.

Oswaldo Álvarez, venezolano, nacido el 10 de febrero de 1943 en la ciudad de Maracaibo, Estado Zulia.

2317. De acuerdo con las informaciones recibidas, el Sr. Oswaldo Álvarez fue detenido el 23 de marzo de 2010 en la ciudad de Caracas. La detención se basaría en la difusión de una opinión en una emisión en la televisión venezolana del programa “Aló ciudadano”. Se le acusa de conspiración y difusión de información falsa.

Llamamiento urgente

2318. El 14 de junio de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente en relación con la orden de búsqueda y arresto emitida contra el **Sr. Guillermo Zuloaga Núñez, Presidente de Globovisión**. Globovisión es un canal de noticias de televisión que emite con señal abierta y que se propone realizar un periodismo independiente, crítico y sin censura.

2319. Según las informaciones recibidas, el día 11 de junio de 2010, el Fiscal General habría emitido una orden de búsqueda y arresto contra el Sr. Zuloaga y contra su hijo acusados de irregularidades en un negocio de compra-venta de vehículos. Actualmente, tanto el Sr. Zuloaga como su hijo se encontrarían en paradero desconocido.

2320. El Sr. Zuloaga ha sido objeto de un llamamiento anterior enviado por el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos el 27 de enero de 2010, donde se habrían detallado alegaciones de múltiples actos de hostigamiento, intimidación, amenazas y procesos disciplinarios contra los trabajadores de Globovisión así como la investigación criminal en curso contra el Sr. Zuloaga. En una sentencia del 3 de marzo de 2009, la Corte Inter-americana habría responsabilizado al Estado venezolano por las agresiones y ataques contra los trabajadores de Globovisión. Hasta la fecha, el Gobierno de Venezuela no habría respondido a estas alegaciones.

2321. Se expresó seria preocupación por las alegaciones de que el proceso penal y la reciente orden de búsqueda y arresto contra el Sr. Zuloaga y su hijo pudieran estar conectados con sus actividades de promoción y defensa de una prensa libre e independiente en Venezuela. La historia de intimidación y amenazas contra los trabajadores de Globovisión, así como las alegaciones acerca de la motivación del proceso penal abierto con el Sr. Zuloaga, de ser confirmados, se enmarcarían en un contexto de gran vulnerabilidad para los defensores de los derechos humanos y para el derecho a la libertad de expresión en Venezuela.

Respuestas del Gobierno a comunicaciones enviadas con anterioridad

2322. Mediante carta fechada el 6 de diciembre de 2010, el Gobierno respondió a la carta de alegaciones con fecha 18 de enero de 2010 relacionado con el caso del Sr. **Mijail Martínez**.

2323. Sobre el particular, el Gobierno tiene a bien transcribir la información proporcionada por el Agente del Estado para los Derechos Humanos ante el Sistema Interamericano e Internacional de Venezuela en octubre del presente año, la cual es del siguiente tenor:

2324. la causa en referencia es conocida por la Fiscalía Segundo del Ministerio Público de la Circunscripción Judicial del Estado Lara, a cargo de la abogada Lucía Anzola, debiendo resaltar que en fecha 27 de noviembre de 2009, se dio inicio a la investigación penal correspondiente, realizando el Despacho Fiscal, las actuaciones útiles y necesarias, a los fines de determinar las responsabilidades a que haya lugar, dentro de las que cabe mencionar solicitud de relación de llamadas a varias compañías de telefonía celular,

solicitud de orden de allanamiento, trayectoria balística, levantamiento planimétrico, inspección técnica, protocolo de autopsia, entre otras. Asimismo, se solicitó al Tribunal Tercero en Funciones de Control del Circuito Judicial Penal del Estado Lara, medida de privación judicial preventiva de libertad contra el ciudadano Jairo José Salones Ollarves, la cual fue acordada por el Órgano Jurisdiccional; el 12 de diciembre de 2009, se efectuó el acto de imputación contra el referido ciudadano y debido a aspectos procesales relacionados con otra investigación penal incoada en su contra, le fue otorgada Medida Cautelar Sustitutiva, expedida por el Tribunal Quinto de Primera Instancia en Funciones de Control del Circuito Judicial del Estado Lara, no estando a derecho hasta los actuales momentos, razón por la cual, en la actualidad la causa se encuentra en Fase de Investigación.

2325. Finalmente, hago de su conocimiento que al 26 de noviembre de 2009, fue solicitada ante la Fiscalía Sexta del Ministerio Público de la Circunscripción Judicial del Estado Lara, Medida de Protección.’

2326. Mediante carta fechada el 22 de diciembre de 2010, el Gobierno respondió a la carta de alegaciones con fecha 31 de mayo de 2005 en relación con *Radio Alternativa de Caracas 94.9 FM*, una emisora comunitaria.

2327. En fecha 10 de mayo de 2005, funcionarios de CONATEL notificaron a la Fundación Radio y Televisora Alternativa de Caracas, el inicio del procedimiento administrativo sancionatorio, contenido en la Providencia Administrativa N° 587 de fecha 9 de mayo de 2005, por el presunto establecimiento y explotación de redes de telecomunicaciones, así como el uso de porciones del espectro radioeléctrico sin contar con la habilitación administrativa y concesión requerida a tal fin, supuesto previsto y sancionado por la Ley Orgánica de Telecomunicaciones en el numeral 1 del artículo 166, numeral 1 del artículo 173, y el artículo 175.

2328. Asimismo, la Providencia Administrativa N° 587, ordeno la aplicación de las medidas cautelares de carácter provisionalísimo de suspensión inmediata del uso y explotación de la frecuencia 94,9 MHz por parte de la Fundación Radio y Televisora Alternativa de Caracas, así como la incautación de los equipos empleados por la mencionada Fundación para la prestación del servicio de radiodifusión sonora, ambas previstas en los numerales 1 y 3 del artículo 183 de la Ley Orgánica de Telecomunicaciones.

2329. En la actualidad, el procedimiento administrativo sancionatorio iniciado a la Fundación Radio Televisora Alternativa de Caracas, concluyó la fase de sustanciación, y se encuentra en etapa de decisión. Asimismo, a la fecha, la mencionada Fundación no ha sido habilitada por el Órgano competente para la prestación de servicios de telecomunicaciones y no se tiene conocimiento que se encuentre al aire.

2330. En relación con la presunta confiscación de los equipos transmisores de Radio Alternativa de Caracas realizada por funcionarios de la Comisión Nacional de Telecomunicaciones y efectivos del Ejército Nacional bolivariano, hacemos las siguientes consideraciones: La Ley Orgánica de Telecomunicaciones prevé la incautación como medida cautelar y no consagra de modo alguno la figura de la confiscación. Lo anterior es importante resaltarlo, debido a la diferencia que existe entre las dos figuras jurídicas.

2331. La incautación implica la acción por parte del Estado, a través de la autoridad competente, para tomar posesión de los bienes de un particular. En el caso de la Ley Orgánica de Telecomunicaciones, la incautación está prevista como una medida cautelar, es decir una medida preventiva adoptada por la Administración, con la finalidad de evitar que los particulares realicen acciones que atenten contra el interés general y los bienes jurídicos tutelados por la Ley, durante el curso del procedimiento administrativo sancionatorio. De este modo, la incautación es una medida cautelar, no una sanción, y en consecuencia la privación de los bienes es provisional, y dure hasta tanto se decide el procedimiento, en

cuyo caso la Administración podría declarar el comiso o devolver los bienes objeto de incautación.

2332. Por lo anteriormente planteado, aclaramos que CONATEL no declare la confiscación de los bienes empleados por los particulares en la prestación de los servicios de telecomunicaciones, si no que se limita a ejercer las potestades que le confiere la Ley Orgánica del Telecomunicaciones, incautando y comisando aquellos equipos y materiales empleados en la instalación, operación, prestación o explotación de servicios de telecomunicaciones sin poseer los títulos habilitantes que se requieren para ello.

Observaciones

2333. El Relator Especial agradece al Gobierno las respuestas recibidas. Sin embargo, lamenta que al finalizar este informe, no se había recibido respuestas a 8 comunicaciones. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato, es por ello que insta al gobierno venezolano a que le proporcione una respuesta tratando los asuntos mencionados.

2334. El 17 de junio de 2010, el Relator Especial exhortó a las autoridades venezolanas a retirar las órdenes de arresto contra Guillermo Zuloaga, presidente del canal privado de televisión Golobovisión, y su hijo.

Viet Nam

Urgent appeal

2335. On 7 February 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a joint urgent appeal concerning the sentencing of **Mr. Vi Duc Hoi**, member of Bloc 8406, a network of pro-democracy and human rights activists which has published a Manifesto on Freedom and Democracy in Viet Nam, who has written extensively about corruption and injustice in Viet Nam.

2336. According to information received, on 26 January 2011, Mr. Vi Duc Hoi was sentenced to eight years of imprisonment, followed by five years of house arrest by a court in northern Lang Son province. He was convicted of “spreading anti-government propaganda” in violation of article 88 of the Penal Code for having posted articles on the Internet calling for democracy. No foreign media or diplomats were allegedly permitted to be present at the hearing.

2337. He was arrested on 27 October 2010 and placed under four-month detention. Prior to his arrest, public security officials raided his home on 7 October 2010, after which he was detained and interrogated for one week.

2338. Concern was expressed that Mr. Vi Duc Hoi has been sentenced to imprisonment solely for exercising his legitimate right to freedom of opinion and expression, and that his case is part of an ongoing trend of utilizing the vaguely worded provisions of the Penal Code to imprison peaceful dissidents and Government critics. Further concern was expressed for the physical and psychological integrity of Mr. Vi Duc Hoi and at least 30 other peaceful dissidents who are currently serving long prison terms or are in detention awaiting trial.

2339. Without prejudging the accuracy of these allegations, the Special Rapporteurs appealed to the Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with article 19 of the International Covenant on Civil and Political Rights (ICCPR), which the Government of Viet Nam ratified on 24 September 1982, and provides that “everyone shall have the right to freedom of expression; this right

shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

2340. Additionally, the Special Rapporteurs reminded the Government that while the right to freedom of expression may be limited for the protection of national security or of public order in accordance with article 19(3) of the ICCPR, such restrictions must be provided for by law, meaning that the law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.

2341. The Special Rapporteurs expressed their concern that article 88 of the Penal Code, which prohibits “conducting propaganda against the Socialist Republic of Vietnam”, does not meet the above-mentioned criterion due to the vagueness of the types of expression or publication which are prohibited. More specifically, it is unclear what types of expression or actions would constitute “propagating against, distorting and/or defaming the people’s administration”, “propagating psychological warfare and spreading fabricated news in order to foment confusion among people”, or “making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam”.

2342. Moreover, the Special Rapporteurs reiterated that any restriction to the right to freedom of expression on the grounds of protecting national security is only legitimate if the Government can demonstrate that the expression is intended to incite imminent violence, it is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence (see Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in E/CN.4/1996/39 of 1996). In this case, it is unclear how Mr. Vi Duc Hoi’s peaceful expression constituted such direct and imminence violence and thus a threat to national security.

2343. Further, Human Rights Council Resolution 12/16 calls upon States to refrain from imposing restrictions to the right to freedom of expression which are not consistent with article 19(3), including on discussion of Government policies and political debate; reporting on human rights, Government activities and corruption in Government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief.

2344. In addition, the Special Rapporteurs referred to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

2345. Furthermore, the Special Rapporteurs brought the attention of the Government the following provisions of the Declaration:

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to

study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

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

2346. Finally, the Special Rapporteurs recalled the recommendations that have been accepted by the Government of Viet Nam following the Universal Periodic Review, including to engage in dialogue with international experts on legal developments on the review of its Penal Code to allow less scope for open interpretation of these provisions by judges and courts; to continue to work to ensure key pieces of national legislation, including the 1999 Penal Code and 2003 Criminal Procedures Code, are consistent with its international human rights treaty commitments; and to strengthen efforts in the areas of civil and political freedoms, including freedom of expression and the press (A/HRC/12/11).

2347. The Special Rapporteurs requested the Government to provide details on how the sentencing of Mr. Vi Duc Hoi to eight years of imprisonment and give years of house arrest for peacefully expressing his views via the Internet is in conformity with international human rights norms and principles highlighted above. In particular, the Special Rapporteurs requested the Government to provide information on how his imprisonment is necessary, proportionate and directly linked to the protection of national security.

2348. In addition, the Special Rapporteurs requested the Government to provide information on how article 88 of the 1999 Penal Code, which carries penalties of three to 12 years of imprisonment, is compatible with article 19 of the ICCPR, and in particular, how this provision is compatible with:

(a) the principle that laws restricting the right to freedom of expression must be “accessible, unambiguous, draw narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful”; and

(b) the principle that any sanctions must be proportionate and the least intrusive means to attain a legitimate aim.

2349. The Special Rapporteurs urged the Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Vi Duc Hoi are respected and that accountability of any person guilty of the alleged violations is ensured. They also requested that the Government adopts effective measures to prevent the recurrence of these acts.

Response from the Government

2350. In a letter dated 14 April 2011, the Government responded to the communication sent on 7 February 2011 as follows.

2351. Mr. Vi Duc Hoi was a member of Huu Lung district’s authority in Lang Son province, in Northern Viet Nam, an area very diversified in terms of ethnics and religions. From 2006 to 2007, Mr. Vi Duc Hoi benefitted from his status as an authority’s member, colluded with hostile forces and exile organizations and groups, in both Viet Nam and

abroad, in instigating riots, social instability and disorder. He also produced and circulated documents of defamation to incite confusion, suspicion, violence, hatred and division between ethnic and religious communities in the province.

2352. Mr. Vi Duc Hoi was accused of activities violating Vietnamese laws and sentenced by the People's Court of Lang Son province to 8 years in prison and 5 years of probation according to article 88 of the 1999 Penal Code which reads "those who propagate psychological warfare and spreading fabricated news in order to foment confusion among people shall be sentenced to between three and twelve years of imprisonment." Mr. Vi Duc Hoi has confessed his violations and implored for mercy. The arrest and criminal proceedings initiation against Mr. Vi Duc Hoi are carried out in strict compliance with the sequence and procedures stipulated in existing Vietnamese laws, particularly the 2003 Criminal Procedures Code and also in line with international standards on human rights, particularly the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights. The trial was public with the participation of lawyers, witnesses and the presence of the family of Mr. Vi Duc Hoi. The presence of media, including foreign media, and diplomats at the hearing totally falls within the competence of the court as stipulated in the 2003 Criminal Procedures Code.

2353. Article 88 of the 1999 Penal Code is strict compatible with article 19 of the International Covenant on Civil and Political Rights which reads "The exercise of the right to freedom of expression carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and necessary: (a) For respect of the rights or reputations of others; or (b) for the protection of national security or of public order, or of public health or morals." As in many other States of law in the world, in Viet Nam, all violations by law, causing harm to national security and public order must be punished in order to ensure the respect of law and to guarantee the rights of other people and the peace, security and development which are common interests of the society. Activities carried out by Mr. Vi Duc Hoi were well organized, repeated and clearly aimed to incite violence and hatred between different ethnics and religious communities. The punishment of these violating activities is absolutely in compliance with standards of international law.

Observations

2354. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communications of 21 April 2011, 25 November 2011 and an earlier communication sent on 9 March 2009. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2355. The Special Rapporteur thanks the Government for the reply to his communication of 7 February 2011 dated 14 April 2011. However, the Special Rapporteur regrets that the Government has failed to provide information that he had requested, including detailed and concrete information on how Mr. Vi Duc Hoi's activities amounts to direct incitement of violence and hatred, as well as clarification of vague and ambiguous terms contained in article 88 of the Penal Code. Contrary to the response of the Government, the Special Rapporteur reiterates that this article does not meet international human rights standards on the right to freedom of expression, which requires any law restricting the right to be (1) clear and unambiguous, so that individuals can foresee what kinds of expression are unlawful; (2) justified as being necessary to protect one of the specific aims listed in article 19, paragraph 3 of the ICCPR; and (3) proportionate to the aim, meaning that the restriction must be proven as the least restrictive means available to achieve the purported aim. With regard to the last element, the Special Rapporteur is of the view that the penalty of between

three to 18 years of imprisonment constitutes a disproportionate sentence, which also leads to a chilling effect on the right to freedom of expression in the country. The Special Rapporteur thus urges the Government to bring this provision in line with international standards, and to fully guarantee that all individuals can exercise their legitimate right to freedom of opinion and expression without fear of imprisonment or harassment.

2356. More generally, the Special Rapporteur remains seriously concerned about restrictions to the right to freedom of opinion and expression, including dissemination of information and opinions via the Internet, and related rights to freedom of association and assembly in Viet Nam. The Special Rapporteur is gravely concerned that over 30 individuals reportedly remain imprisoned, including members of banned political groups, independent trade unionists, bloggers, journalists and writers. He is also concerned by reports of dissidents being placed under house arrest. The Special Rapporteur would like to reiterate that reporting on or denouncing human rights violations should never be subjected to restrictions.

Yemen

Urgent appeal

2357. On 3 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding the **deaths of at least 16 people, and violence against journalists in the Republic of Yemen in connection with several demonstrations held since mid-January 2011**. According to reports, the demonstrations were initially against unemployment, economic conditions and corruption, as well as your Excellency's Government's proposals to modify the Constitution which would allow the President to remain in office for life. As demonstrations have continued, protesters have started calling for the resignation of President Ali Abdullah Saleh.

2358. According to information received, on 11 February 2011, a second wave of demonstrations began in Yemen. On 11, 12 and 13 February 2011, several thousand people reportedly demonstrated in several cities to celebrate the resignation of President Mubarak, as well as to call for reforms and resignation of President Ali Saleh. Reports indicate that the security forces allegedly used electric tasers and batons to quell demonstrators in Sana'a. Anti-Government demonstrators were also allegedly attacked and beaten by hundreds of men armed with knives, sticks, and assault rifles. In southern Yemen, approximately 3,000 people reportedly took part in the "Day of Rage" demonstrations to demand secession from the north. Security forces allegedly quelled the demonstrators by use of force. In the south-western city of Taiz, security officials reportedly arrested between 35 and 120 people, including some from their homes. Some of the detainees were allegedly beaten and mistreated in police stations while in custody.

2359. On 16 February 2011, approximately 500 people reportedly held a protest in the city of Aden in southern Yemen, calling to "overthrow the regime" and for President Saleh "to leave". At least two protesters allegedly died of gunshots from clashes with the police. In Sana'a, hundreds of students protesting against the President were allegedly attacked by Government supporters armed with batons, stones and daggers. Reports indicate that at least 14 people were injured in the nationwide protests. Judges also reportedly continued a sit-in which started the day before, calling for greater independence of the judiciary, for the members of the Supreme Judicial Council to be dismissed, and for higher salaries.

2360. On 18 February 2011, tens of thousands of people reportedly took part in anti-Government demonstrations in Sana'a, Taiz and Aden. Pro-Government demonstrators also reportedly gathered in several cities. In Taiz, three people were allegedly killed in the demonstrations, with one of the deaths resulting from a hand grenade that was reportedly thrown at anti-Government protesters, which also allegedly injured eight others, including Ms. Bushra Al-Maqtari, freelancer for Marebpress website who was covering a sit-in by demonstrators in a square that has been dubbed "Liberation Square". In Sana'a, pro and anti-Government protesters clashed, allegedly resulting in intense fighting with sticks and metal rods.

2361. On 19 February 2011, five anti-Government protesters were reportedly wounded by gunfire, three of them seriously, during clashes with pro-Government demonstrators, as both sides allegedly fired pistols and assault rifles. In Sana'a, the editor of the newspaper for the Ministry of Defence was allegedly wounded when he was beaten and stabbed by anti-Government protesters.

2362. On 20 February 2011, Mr. Hasan Ba'oom, leader of the opposition coalition Southern Movement and Chairman of the Supreme National Council for the Liberation of the South, was allegedly arrested by security forces at a hospital in Aden, where he was receiving treatment for a broken leg. It has been alleged that after his arrest, he was taken to a military hospital in Aden and subsequently transferred to the Central Prison in Sana'a. He is reported to be held incommunicado. Mr. Ba'oom suffers from hypertension, heart disease and diabetes, and it is not known whether he is receiving medical treatment.

2363. On 21 February 2011, a male protester and a young girl reportedly died in a hospital in Aden after they were wounded by stray bullets during the preceding day's protests.

2364. On the night of 22 February 2011, two men were reportedly shot dead by pro-Government demonstrators during a clash between pro and anti-Government demonstrators in front of Sana'a University, while 21 people, many of them teenagers, were allegedly wounded. Reports indicate that Government supporters broke through a police line and fired at protesters with AK47 assault rifles and pistols.

2365. In addition to the information above, the Special Rapporteurs also received reports that security forces have either participated in or stood by as journalists were attacked while covering the demonstrations. According to reports received, at least 31 international and Yemeni journalists have allegedly been beaten or harassed by security forces or armed supporters of the President, including the following incidents.

2366. While covering demonstrations held on 11 and 14 February 2011 in Sana'a, journalists' video cameras were allegedly confiscated and smashed, and the contents of memory cards were deleted. Some journalists were also allegedly beaten.

2367. On 16 February 2011, Mr. Hassan Wataf, photographer for Associated Press, was reportedly attacked with a jambiya, a traditional Yemeni sword, and his video camera was taken while he was covering the student protests in Sana'a. Mr. Abdullah Abdul Al-Quoa Al-Soufi, cameraman for Al-Arabiya, was allegedly beaten by Government supporters on a deserted street and his camera was broken.

2368. On 17 February 2011, Mr. Yahra Arhab, photographer for the European Pressphoto Agency, was reportedly attacked by a dozen protesters while covering a demonstration in Sana'a, and his camera was broken. Mr. Adel Abdel Mughni, reporter for Al-Wahdawi, was allegedly beaten and his camera was stolen.

2369. On the same day, Mr. Samir Nimri, cameraman for Al-Jazeera, and Mr. Ahmand Ghrasi, photographer for Agence France Press, were allegedly attacked and their cameras were broken. Mr. Ammar Awad, freelance journalist for Reuters, was allegedly beaten on

the streets of Sana'a. Mr. Tom Finn, reporter for the Guardian newspaper, was allegedly attacked by a group of men armed with sticks who tried to take his camera.

2370. On 18 February 2011, pro-Government supporters allegedly attacked Mr. Hamoud Munser, head of the Sana'a bureau of the Dubai-based satellite television station Al-Arabiya, and a cameraman for the same station was also allegedly hospitalized. Mr. Awsan Al-Qaatabi, correspondent of the Islamic Republic of Iran's Al-Alam TV, and Mr. Yasser Al-Maamari, cameraman of Qatar TV, were also allegedly attacked while covering a demonstration in the Sana'a district known as Kentucky.

2371. Also on the same day, 18 employees of Al-Yaqeen, an independent newspaper based in Aden, were allegedly arbitrarily arrested and taken to the Aden governorate security headquarters. The arrests were reportedly carried out by a special unit assigned to combating piracy and banditry. The newspaper had extensively covered the demonstrations, naming the individuals who had been killed or injured. It also published interviews with the head of the Socialist Party parliamentary group and a political scientist, who reportedly discussed the possibility of the Egyptian revolution spreading to Yemen.

2372. On 20 February 2011, students started a sit-in at Sana'a University, while thousands of people also staged sit-ins in Ibb and Taiz. While covering the sit-in, Mr. Abdel-Karim Salam, correspondent of Swiss Info, was allegedly attacked by three plainclothes security agents and had to be hospitalized.

2373. On 22 February 2011, Mr. Zaki Saqladi, correspondent of the news website AlmasadarOnline, was allegedly assaulted by security forces in Ad-Dali, who confiscated his car and camera.

2374. Concern was expressed regarding the safety of the protesters who are exercising their legitimate right to freedom of opinion and expression and the right to freedom of assembly. Further concern was expressed regarding attacks against journalists in what may be part of an escalating crackdown on the media by the security forces of the Republic of Yemen.

Observations

2375. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 3 March 2011 and to earlier communications sent on 21 January 2010, 2 December 2009, 13 October 2009, 29 September 2009, 25 August 2009, 23 July 2009 and 4 May 2009. He urges the Government to respond to the concerns raised by him.

2376. The Special Rapporteur remains seriously concerned about the situation of the right to freedom of expression in Yemen, including reports of harassment, prosecution and imprisonment of journalists and media representatives. He calls upon the Government to fully guarantee all individuals' right to freedom of opinion and expression, including via the Internet, as well as their collective expression in the form of peaceful assemblies. The Special Rapporteur also urges the Government to ensure that the media are able to report freely on the situation in Yemen.

Zimbabwe

Urgent appeal

2377. On 29 March 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a joint urgent appeal regarding the situation of **Mr. Okay Machisa**. Mr. Machisa is the National Director of the Zimbabwe Human Rights Association (ZimRights). Composed of a network of human rights organisations and

including over 700,000 members, ZimRights works to promote human rights by carrying out education programs and lobbying, providing legal aid and by researching and publishing on human rights issues. In particular, ZimRights has promoted the constitution-making process, and has campaigned on the right of people to be involved in the drafting of the new constitution as well as by carrying out public education campaigns about the constitutional process.

2378. Mr. Machisa and other members of ZimRights had reportedly been subject to ongoing harassment, including arbitrary arrest, threats and intimidation. According to the information received, on 23 March 2010, Mr. Machisa was reportedly arrested in Harare by local police officers and held for several hours before being released. Mr. Machisa was checking on final preparations for the opening of a photography exhibition at the Gallery Delta in Harare. The exhibition, entitled “Reflections”, was due to be opened on 24 March 2010 by Prime Minister Morgan Tsvangirai, and forms part of a national programme of healing which aims to encourage reflection and reconciliation following the political violence that took place in relation to the elections of 2007. The “Reflections” exhibit, organised by ZimRights, was part of this campaign by promoting the message that “violence and intimidation never yield any progress”.

2379. At approximately 4:00pm, about 20 police officers, both uniformed and plain clothed, arrived at the Gallery in two trucks and began to remove the 65 photographs which comprised the exhibition, although they allegedly did not have a warrant to do so. It is reported that during this raid, the police officers acted in a threatening and intimidation manner towards Mr. Machisa before arresting him and taking him to Harare Central District Police Station. The police also reportedly confiscated two mobile phones belonging to Mr. Machisa, and it is reported that the police had come to the Gallery to take photos of the exhibition materials earlier that morning, without authorization.

2380. The Commanding Officer of the Harare Central District allegedly claimed that he had not approved the launch of the exhibition and gave Mr. Machisa seven days to present “letters of consent from individuals and organisations” featured in the pictures. Mr. Machisa was allegedly warned that if he did not do so he could face criminal charges. He was later released at 6:30 pm that evening following the intervention of lawyers from the organisation, Zimbabwe Lawyers for Human Rights (ZLHR). The following day, on 24 March 2010, the High Court ordered the police to return the photo exhibits to ZimRights within an hour, following an urgent legal application filed by ZLHR's lawyers. The police complied with the ruling and the materials were returned.

2381. It was alleged that ZimRights had notified the relevant authorities about the preparations for the exhibition during the week of 15 March 2010, and it is reported that ZimRights obtained a High Court Order to allow the exhibition to go ahead. On 17 and 18 March 2010, Ms. Olivia Gumbo, the ZimRights National Programme Manager, and Mr. Machisa were allegedly summoned by the police to answer questions about the exhibition.

2382. ZimRights filed a police report under number IR 030 117 on 2 March 2010 in relation to threatening messages received by members of the organisation. These included an email received on 16 February 2010 by Mr. Machisa from a person claiming to be called Dzapasi Mumunda. The message said: “Be careful my friend a number of people at my workplace have been assigned to bring you down. I refused to be involved. Be careful especially at your home”. This followed an incident in November 2009 in which several armed men waited at the gate of Mr. Machisa's house until he returned home from a meeting. They left only when Mr. Machisa alerted the police and various colleagues.

2383. It was further alleged that on 25 February 2010, Mr. Nunurai Jena, ZimRights' Regional Chairperson of ZimRights for Mashonaland West, Mr. Netsai Kaitano, Regional Chairperson of ZimRights in Chitungwiza, and Mr. Jabulisa Tshuma, Treasurer of

ZimRights, also received various threatening messages on their mobile phones warning them to stop their work educating the public about the constitution-making process. The messages threatened them with death if they did not do so, and asked about their motives in working with ZimRights. The messages were sent from the same mobile phone number, which was later unreachable.

2384. Mr. Machisa also received a threatening message during the same period, which said: “You enjoy flying in and out of the country demonizing your country, why don’t you go and stay there? They monitor, soon you will all stay out”. It is believed that the threat related to his participation in a European Union meeting in Brussels regarding the sanctions targeted against a number of Zimbabwean political figures.

2385. The threats against and harassment of members of ZimRights seem to form part of a larger pattern of intimidation against civil society in Zimbabwe in recent months. In the first three months of 2010, there have been reported incidents involving members of the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ), Zimbabwe Congress of Trade Unions (ZCTU), Crisis in Zimbabwe Coalition (CZC), Civic Education Trust (Civnet), Counselling Services Unit (CSU), as well as Women of Zimbabwe Arise (WOZA). These incidents include threats, arrests, detention, interrogations, raids of office premises, and disruption of meetings, as a result of which at least one human rights defender has gone into hiding.

2386. Concern was expressed that the arrest of Mr. Machisa, and the aforementioned threats and acts of harassment against members of various human rights organisations including ZimRights, are related to their work in defence of human rights.

2387. On 22 April 2010, the Special Rapporteur, together with together with the Special Rapporteur on the situation of human rights defenders sent a joint urgent appeal regarding the situation of **Million, Mavis Sibanda, Jenni Williams, Magodonga Mahlangu, Clara Manjengwa and Celina Madukani**, members of Women of Zimbabwe Arise (WOZA). WOZA is a grassroots organization working to promote and protect women’s activism. WOZA members had been the subject of previous communications by special procedures mandate-holders on 29 September 2004, 27 October 2004, 19 April 2005, 20 May 2005, 28 June 2005, 16 February 2006, 15 September 2006, 7 December 2006, 12 June 2007, 28 September 2007, 6 June 2008, 8 July 2008, 27 October 2008 and 21 January 2010.

2388. According to the information received, on 13 April 2010, Million and Mavis Sibanda were allegedly arrested by two plain clothed police officers during a public meeting convened by the Competition and Tariff Commission in the City Hall of Bulawayo. Two hundred members of WOZA were attending this public meeting to present their views to the Commission on the poor electricity services provided by the Zimbabwe Electricity Supply Authority (ZESA). It is alleged that the police officers searched the bags of Million and Mavis Sibanda before bringing them to the Central police Station.

2389. Million and Mavis Sibanda were then allegedly questioned about the meeting of the Commission and their life history. Yellow cards, which were handed over by WOZA members to ZESA on 12 April 2010 in protest of poor service and high tariffs to the Management of the electricity provider, were found on Million and allegedly confiscated. During the interrogation, other police officers reportedly insisted on Million and Mavis Sibanda being released as they believed WOZA should be allowed to protest on the electricity issue. Million and Mavis Sibanda were released on the same day.

2390. On 15 April 2010, Jenni Williams, WOZA’ National Coordinator was allegedly arrested by the police during a peaceful march to ZESA headquarters in Harare. The peaceful protest was organized by WOZA to hand over “yellow cards”. It is alleged that as WOZA members were waiting outside ZESA premises to meet with the management, riot police with tear gas and weapons arrived at the scene. They reportedly arrested Ms.

Williams on the insistence of ZESA security guards. Sixty one WOZA members handed themselves in solidarity to Ms. Williams. It is reported that all but four WOZA members were released on the same day.

2391. Jenni Williams, Magodonga Mahlangu, Clara Manjengwa and Celina Madukani were allegedly detained without charge for six days at the Harare Central Police Station. On 20 April 2010, the four WOZA members were reportedly released following the Attorney General's office refusal to press charges against them due to lack of sufficient evidence.

2392. It was alleged that Jenni Williams, Magodonga Mahlangu, Clara Manjengwa and Celina Madukani were verbally abused by police officers upon arrival at the Harare Central Police Station. During their detention, officers from the Law and Order Department allegedly pressurized them to pay 'admission of guilt' fines to 'buy' their freedom which they refused. It is also alleged that because of the poor prison conditions and in particular the lack of hygiene, the four WOZA members got rash all over their bodies and diarrhea.

2393. Concern was expressed the arrest and detention of the above-mentioned members of WOZA might be directly related to their peaceful activities in the defense of human rights. Further concern is expressed that these arrests and detentions might form part of a broader pattern to intimidate members of WOZA.

2394. On 17 June 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers sent a joint urgent appeal regarding the case of **Mr. Farai Maguwu**, director of the Zimbabwean non-governmental organization Centre for Research and Development (CRD). The CRD has documented human rights abuses in the Marange diamond fields, and is involved in the Kimberly Process, an international coalition of Governments, industry and civil society organizations which aims at breaking the links between the diamond trade and the funding of violence.

2395. According to the information received, on 26 May 2010, Mr. Farai Maguwu shared information with an independent monitor for the Kimberley Process in Zimbabwe on alleged human rights abuses in the diamond fields.

2396. On 27 May, armed security agents reportedly raided both the office and home of Mr. Farai Maguwu, and confiscated his passport, computer and other personal belongings. Mr. Farai Maguwu escaped and went into hiding.

2397. On 3 June, Mr. Farai Maguwu handed himself to the Harare Central Police Station, and was immediately arrested. On 7 June, Mr. Farai Maguwu was charged with communicating information prejudicial to the State. Mr. Farai Maguwu has been denied bail, and remains detained at the Harare Central Police Station. He has further been denied access to his medication to treat a chest and throat infection. A court has reportedly ordered that he be allowed to receive his medication.

2398. During the aforementioned raid, the nephew of Mr. Farai Maguwu, Mr. Lisbern Maguwu, was arrested and was subsequently beaten in custody. Lawyers attempting to meet him received threats from police officers. Mr. Lisbern Maguwu was released on bail after being charged with violence against security agents. He is currently awaiting trial. Since the raid, other members of Farai Maguwu's family have reportedly been interrogated and beaten by police officers. Other CRD staff members went into hiding in fear for their safety.

2399. Serious concern was expressed that the arrest and detention of Mr. Farai Maguwu may be related to his legitimate human rights activities, in the exercise of the right of Mr. Farai Maguwu to freedom of opinion and expression. Further concern is expressed that the

arrest and detention of and charges against Mr. Lisbern Maguwu, as well as the acts of ill treatment against him, may be linked to the human rights activities of his uncle, Mr. Farai Maguwu. Finally, serious concern is expressed for the physical and psychological integrity of Mr. Farai Maguwu, members of his family, including Mr. Lisbern Maguwu, and CRD staff members.

Allegation letter

2400. On 22 April 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an allegation letter regarding the situation of **Million, Mavis Sibanda, Jenni Williams, Magodonga Mahlangu, Clara Manjengwa and Celina Madukani, members of Women of Zimbabwe Arise (WOZA)**. WOZA is a grassroots organization working to promote and protect women's activism. WOZA members have been the subject of previous communications by special procedures mandate-holders on 29 September 2004, 27 October 2004, 19 April 2005, 20 May 2005, 28 June 2005, 16 February 2006, 15 September 2006, 7 December 2006, 12 June 2007, 28 September 2007, 6 June 2008, 8 July 2008, 27 October 2008 and 21 January 2010.

2401. According to the information received, on 13 April 2010, Million and Mavis Sibanda were allegedly arrested by two plain clothed police officers during a public meeting convened by the Competition and Tariff Commission in the City Hall of Bulawayo. Two hundred members of WOZA were attending this public meeting to present their views to the Commission on the poor electricity services provided by the Zimbabwe Electricity Supply Authority (ZESA). It is alleged that the police officers searched the bags of Million and Mavis Sibanda before bringing them to the Central police Station.

2402. Million and Mavis Sibanda were then allegedly questioned about the meeting of the Commission and their life history. Yellow cards, which were handed over by WOZA members to ZESA on 12 April 2010 in protest of poor service and high tariffs to the Management of the electricity provider, were found on Million and allegedly confiscated. During the interrogation, other police officers reportedly insisted on Million and Mavis Sibanda being released as they believed WOZA should be allowed to protest on the electricity issue. Million and Mavis Sibanda were released on the same day.

2403. On 15 April 2010, Jenni Williams, WOZA' National Coordinator was allegedly arrested by the police during a peaceful march to ZESA headquarters in Harare. The peaceful protest was organized by WOZA to hand over "yellow cards". It is alleged that as WOZA members were waiting outside ZESA premises to meet with the management, riot police with tear gas and weapons arrived at the scene. They reportedly arrested Ms. Williams on the insistence of ZESA security guards. Sixty one WOZA members handed themselves in solidarity to Ms. Williams. It is reported that all but four WOZA members were released on the same day.

2404. Jenni Williams, Magodonga Mahlangu, Clara Manjengwa and Celina Madukani were allegedly detained without charge for six days at the Harare Central Police Station. On 20 April 2010, the four WOZA members were reportedly released following the Attorney General's office refusal to press charges against them due to lack of sufficient evidence.

2405. It is alleged that Jenni Williams, Magodonga Mahlangu, Clara Manjengwa and Celina Madukani were verbally abused by police officers upon arrival at the Harare Central Police Station. During their detention, officers from the Law and Order Department allegedly pressurized them to pay 'admission of guilt' fines to 'buy' their freedom which they refused. It is also alleged that because of the poor prison conditions and in particular the lack of hygiene, the four WOZA members got rash all over their bodies and diarrhea.

2406. Concern was expressed the arrest and detention of the above-mentioned members of WOZA might be directly related to their peaceful activities in the defense of human rights.

Further concern was expressed that these arrests and detentions might form part of a broader pattern to intimidate members of WOZA.

Urgent appeal

2407. On 17 June 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal regarding the case of Mr. **Farai Maguwu**, director of the Zimbabwean non-governmental organization Centre for Research and Development (CRD). The CRD has documented human rights abuses in the Marange diamond fields, and is involved in the Kimberly Process, an international coalition of Governments, industry and civil society organizations which aims at breaking the links between the diamond trade and the funding of violence.

2408. According to the information received, on 26 May 2010, Mr. Farai Maguwu shared information with an independent monitor for the Kimberley Process in Zimbabwe on alleged human rights abuses in the diamond fields.

2409. On 27 May, armed security agents reportedly raided both the office and home of Mr. Farai Maguwu, and confiscated his passport, computer and other personal belongings. Mr. Farai Maguwu escaped and went into hiding.

2410. On 3 June, Mr. Farai Maguwu handed himself to the Harare Central Police Station, and was immediately arrested.

2411. On 7 June, Mr. Farai Maguwu was charged with communicating information prejudicial to the State. Mr. Farai Maguwu has been denied bail, and remains detained at the Harare Central Police Station. He has further been denied access to his medication to treat a chest and throat infection. A court has reportedly ordered that he be allowed to receive his medication.

2412. During the aforementioned raid, the nephew of Mr. Farai Maguwu, Mr. Lisbern Maguwu, was arrested and was subsequently beaten in custody. Lawyers attempting to meet him received threats from police officers. Mr. Lisbern Maguwu was released on bail after being charged with violence against security agents. He is currently awaiting trial. Since the raid, other members of Farai Maguwu's family have reportedly been interrogated and beaten by police officers. Other CRD staff members went into hiding in fear for their safety.

2413. Serious concern was expressed that the arrest and detention of Mr. Farai Maguwu may be related to his legitimate human rights activities, in the exercise of the right of Mr. Farai Maguwu to freedom of opinion and expression. Further concern was expressed that the arrest and detention of and charges against Mr. Lisbern Maguwu, as well as the acts of ill treatment against him, may be linked to the human rights activities of his uncle, Mr. Farai Maguwu. Finally, serious concern was expressed for the physical and psychological integrity of Mr. Farai Maguwu, members of his family, including Mr. Lisbern Maguwu, and CRD staff members.

Urgent appeal

2414. On 1 March 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the **arrest and detention of 45 activists in Harare**.

2415. According to the information received, on 19 February 2011, at approximately 4:00 p.m., police arrested 45 social justice and human rights activists as well as some bystanders, who were attending a meeting in Harare, Zimbabwe on “Revolts in Egypt and Tunisia: what lessons can be learnt for the working class in Zimbabwe and Africa”. Their names are: **Munyaradzi Gwisai, Antonater Choto, Tatenda Mombeyarara, Michael Sozinyu, Eddson Chakuma, Hopewell Gumbo, Welcome Zimuto, Phillip Magaya, Prolific Mataruse, Godknows Biya, David Mupatse, Douglas Muzanenhamo, Ganizani Nunu, Reki Jimu, Josphat Chinembiri, Strutton Muhambi, Trevor Chamba, Clarence Mugari, Munyaradzi Maregedze, Willie Hlatswayo, Ian Muteto, Tinashe Muzambi, Tinashe Mutazu, Pride Mukono, Lenard Kamwendo, Tinashe Chisaira, Trust Munyama, Peter Garanewako, Elizabeth Makume, Megline Malunga, Daison Bango, Malvern Hobwana, Tashinga Mudzengi, Ednar Chabalika, Thokozile Mathe, Francisca Thompson, Masline Zvomuya, Nhamo Kute, Annie Chipeta, Tabeth Chideya, Charles Mubwandarikwa, Thomas Chibaya, Fatima Manhando, Blessing Muguzayaya and Robert Muhlaba.**

2416. The individuals listed above were taken to Harare Central Police station, where a dozen were allegedly beaten under their feet and on their buttocks with broomsticks, metal rods, pieces of timber, open palms, and some blunt objects. It is alleged that Zimbabwean security agents tortured them to induce detainees to become state witnesses and testify against other detainees. Additionally, those who were not tortured were threatened with torture if they did not become state witnesses. They were then denied medical treatment for their injuries. According to the information received, lawyers were initially denied access to those detained. Nevertheless, in the evening of 19 February 2011, the detainees’ lawyers were advised that their clients would be charged under section 22(2)(a)(i) of the Criminal Law (Codification and Reform) Act.

2417. It was only in the course of the preliminary court proceedings which took place on 23 February 2011, that the State Prosecutor accused the activists of treason under section 20 of the Criminal Law (Codification and Reform) Act, in addition to the initial charge of planning a removal of a constitutional government by unconstitutional means, as defined in section 22(2)(a)(i) of the Criminal Law (Codification and Reform) Act. Harare Magistrate Munamato Mutevedzi adjourned proceedings to 24 February 2011 to allow defence lawyers to confer with their clients, as they had not been afforded the opportunity to do so with regard to the new charge of treason. However, the principal prison officer allegedly barred defence lawyers from taking instructions from their clients and transferred the activists to Harare Remand Prison and Chikurubi Maximum Prison.

2418. On 24 February 2011, one of the detainees, Mr. Munyaradzi Gwisai, coordinator of the International Socialist Organisation, testified before Harare Magistrate during an application for refusal of placement on remand for the 45 human rights activists filed by the defence lawyer. Mr. Gwisai disclosed in court that they were subjected to torture sessions during their detention by the police at Harare Central Police Station. Mr. Gwisai also stated that these torture sessions were aimed at securing confessions from the activists which would implicate them in the commission of treason, a charge they are currently facing in court. Mr. Gwisai said that he was tortured together with five other detainees in a room in the basement at Harare Central Police Station by nine state security agents who included some police officers who had arrested them. The alleged torture sessions were administered through assaults all over the detainees’ bodies, under their feet and buttocks through the use of broomsticks, metal rods, pieces of timber, open palms and some blunt objects. It is also alleged that the police subjected detainees to severe interrogation sessions where they attempted to coax some of the detainees to turn against their colleagues and be considered State witnesses in court proceedings.

2419. In court, Mr. Gwisai further reported that the meeting held on 19 February 2011, was held in order to discuss International Socialist Organisation business and issues of democracy and constitutionalism and not to plot the toppling of the Government as alleged by the police and prosecutors. The meeting, which was attended by a HIV/AIDS activist, was also meant to commemorate the life of a deceased HIV/AIDS activist, Navigator Mungoni.

2420. The State Prosecutor, who applied for the placement of detainees on remand, will cross-examine Mr. Gwisai on 28 February 2011. It is reported that all 45 activists remain incarcerated in Harare Remand Prison and at Chikurubi Maximum Prison.

Observations

2421. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to any of his communication sent during the reporting period. In addition, the Government has not responded to communications sent earlier on 21 January 2010 and 7 May 2009. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2422. The Special Rapporteur remains concerned about ongoing reports of arbitrary arrests and detention of journalists and human rights defenders, as well as threats and acts of harassment against human rights defenders for exercising their legitimate right to freedom of opinion and expression. The Special Rapporteur calls upon the Government of Zimbabwe to fully guarantee press freedom in the country and to promote an environment in which journalists and human rights defenders can carry out their legitimate work without fear of harassment or persecution.
