
Advance Version

Distr.: General
27 May 2011

English/French/Spanish only

Human Rights Council

Seventeenth session

Agenda item 3

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

Report of the Special Rapporteur on extrajudicial summary or arbitrary executions, Christof Heyns

Addendum

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

* The present report is circulated as received.

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I. Introduction

1. This report contains a comprehensive account of communications sent by the Special Rapporteur of extrajudicial, summary or arbitrary executions to Governments between 16 March 2010 and 15 March 2011, along with replies received between 1 May 2010 and 30 April 2011. During the period under review, the Special Rapporteur sent 123 communications to 52 countries and 3 actors (including 54 urgent appeals and 69 allegation letters). The main issues covered in the communications were the death penalty (24), deaths in custody (10), death penalty for minors (4), excessive use of force (30), impunity (3), attacks or killings (33), armed conflict (5), death threats (6) and other (8).

2. The Special Rapporteur received 43 responses, 5 acknowledgments and 75 of the communications are yet to be responded to. This represents a 53% response rate, the Special Rapporteur would like to encourage States in line with the Human Rights Council Resolution 8/3 which urges States “To cooperate with and assist the Special Rapporteur in the performance of his or her task, to supply all necessary information requested by him or her and to react appropriately and expeditiously to his or her urgent appeals, and those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer without further delay”.

3. The Special Rapporteur conducted a technical assessment to establish the authenticity of a video allegedly showing the execution of Tamil prisoners by Sri Lankan troops during the civil war. The urgent appeal sent to the Government on the case and forensic reports of the assessment are reproduced in Annex 1 of the present report.

II. Communications and replies

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

A. Violation alleged

5. Violations are classified into the following categories:

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

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

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

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

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

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

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

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

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

B. Subject(s) of appeal

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

C. Character of replies received

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

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

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

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

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

(e) “No response”.

9. There are two minor, additional characterizations: (i) Where a response has been received but has not yet been translated by the United Nations, the response is characterized simply as “Translation awaited”; (ii) Where a response has not been received from the Government but less than 90 days has elapsed since the communication was sent, that fact is indicated by characterizing the response as: “No response (recent communication)”.

D. Observations of the Special Rapporteur

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

III. Tabulation of communications and replies

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

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

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

B. “Number and category of individuals concerned”

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

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

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

D. “Character of replies received”

15. See Section I, paragraph 8 above.

Tabulation of communications requesting stay of executions.

The Human Rights Council in resolution 8/3 requested the Special Rapporteur in carrying out his mandate “ (e) To continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.” The Special Rapporteur has included a table on the status of individuals who were the subject of concern with regard to application of the death penalty.

Table of Communications

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
Afghanistan		Allegation Letter of 14 January 2011	6 males	No response	Death penalty for non-serious crimes (apostasy)
		Allegation Letter of 21 July 2010	2 males	No response	Excessive use of force

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
Angola		Allegation Letter dated 5 October 2010	1 male (journalist)	No response	Attack or killings
Argentina		Allegation letter dated 14 September 2010	1 male and 2 children	No response	Excessive use of force
		Allegation letter dated 1 October 2010	1 male	Response dated 13 January 2011	Impunity
Austria	Joint Urgent appeal dated 1 November 2010		1 male (Human Rights Defender)	Response dated 10 December 2010	Death threats
Bahrain	Urgent appeal dated 17 February 2010		Group concerns (7 identifiable males)	Response dated 5 April 2011	Excessive use of force (during demonstrations)
Belarus	Urgent appeal dated 3 March 2011			Response dated 12 April 2011	Death penalty (imminent execution)
Brazil	Urgent appeal dated 1 December 2010			No response	Death threats + Attack or killing (by unidentified gunmen)
China (People's Republic of)		Allegation letter dated 14 September 2010	4 individuals	No response	Excessive use of force (during demonstrations)
		Urgent appeal dated 13 August 2010	1 Male	No response	Death penalty (for non-serious crimes)
		Allegation letter dated 17	3 Males	No response	Excessive use of force

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
June 2010					
Colombia	Urgent appeal dated 2 December 2010		1 male	Response dated 24 February 2011	Attack or Killings
	Urgent appeal dated 27 October 2010		1 female	No response	Death threats and intimidation
	Urgent appeal dated 13 September 2010		1 male	No response	Other (intimidation of military judge for investigation extrajudicial killings)
	Urgent appeal dated 26 May 2010		1 male	No response	Attack or killings
	Urgent appeal dated 31 May 2010		1 male	Response dated 9 November 2010	Attack or killings
		Allegation letter dated 20 April 2010	1 male	Responses dated 17 June 2010 and 27 July 2010	Impunity
Democratic People's Republic of Korea		Allegation letter dated 10 March 2011	Group Concern (37 males)	Response dated 1 April 2011	Death penalty (for non-serious crimes)
		Allegation letter dated 17 June 2010	3 males	No response	Excessive use of force
Democratic Republic of the Congo	Urgent appeal dated 9 February 2011		2 males	Response dated 7 February 2011	Death threats

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
		Allegation letter dated 7 June 2010	2 males (including a Human Rights Defender)	Responses dated 12 October 2010 and 7 August 2010	Attack or Killings
Ecuador		Allegation letter dated 22 July 2010	1 male	Response 2 November 2010	Other (reprisal killing)
Egypt	Urgent appeal dated 1 February 2011		Group Concern (20 identifiable individuals)	No response	Excessive use of force (during demonstrations)
	Urgent appeal of 8 December 2010		Group Concern (6 identifiable persons)	No response	Attack or Killing (Migrants killings by non-state actors)
		Allegation letter dated 2 October 2010	1 male	Response dated 1 November 2010.	Death in custody
		Allegation letter dated 9 April 2010	3 unidentified persons	No response	Excessive use of force (killing of migrants)
Equatorial Guinea		Allegation letter dated 1 October 2010	4 males	No response	Death penalty
Gabon	Urgent appeal dated 15 February 2010		2 males	No response	Death threats
Guatemala		Allegation letter dated 14 March 2011	3 males and 1 female	No response	Attacks or killings
		Allegation letter dated 21 February	4 males	No response	Attacks or killings

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
		2011			
	Urgent appeal dated 28 December 2010		1 female	Response dated 24 January 2011 and 26 January 2011	Attacks or killingsF
Haiti		Allegation letter dated 15 June 2010	12 Males	No response	Death in custody
Honduras		Allegation letter dated 9 February 2010	31 persons (LGBT)	No response	Attacks or killings
		Allegation letter dated 9 December 2010	19 identifiable individuals	No response	Attacks or killings
		Allegation letter dated 20 April 2010	5 males	No response	Attacks or killings
		Allegation letter dated 22 April 2010	Group concern	Response dated 28 June 2010	Attacks or killings
India		Allegation letter dated 22 October 2010	Group Concern	Acknowledgement dated 3 December 2010	Violations of right to life in armed conflict
		Allegation letter dated 29 July 2010	1 male (Human Rights Defender)	Acknowledgement dated 20 January 2011	Attacks or killings (unidentified gunmen)
Indonesia	Urgent appeal dated 17 February 2011		2 males (religious minorities)	No response	Attacks or killings (religious minority)

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
		Allegation letter dated 22 November 2010	6 males	No response	Excessive use of force (riot/crowd control, arrests)
Iran (Islamic Republic of)	Urgent appeal dated 11 February 2011		1 male, 1 female (juveniles)	No response	Death penalty for minors
	Urgent appeal dated 26 January 2011		Group concern	No response	Death penalty (for non-serious crimes- drug trafficking)
	Urgent appeal dated 11 January 2011		Group concern	Government response dated 4 February 2010	Death penalty (for non-serious crimes- moharebeh)
	Urgent appeal dated 31 December 2010		1 male	No response	Death Penalty (for non-serious crimes)
	Urgent appeal dated 30 December 2010		2 males (religious minorities)	No response	Death penalty (for non-serious crimes- apostasy)
	Urgent appeal dated 30 December 2010		1 male	Response dated 15 February 2011	Death penalty (for non-serious crimes- moharebeh)
	Urgent appeal of 25 November 2010		1 male, 1 female	No response	Death penalty (for non-serious crimes- moharebeh)
	Urgent appeal dated 29 September 2010		1 female	No response	Death penalty (for non-serious crimes- moharebeh)
		Allegation letter dated 31 August	1 male (juvenile)	No response	Death penalty for minors

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
		2010			
	Urgent appeal dated 29 July 2010		1 male (Lawyer)	No response	Other (Human rights lawyer defending capital punishment cases
	Urgent appeal dated 24 June 2010		1 female	Response dated 28 March 2011	Death penalty (for non-serious crimes- adultery)
	Urgent appeal dated 9 June 2010		13 persons	No response	Death penalty (for non-serious crimes- drug trafficking)
	Urgent appeal dated 23 April 2010		1 male and 1 female	Response dated 18 March 2011	Death penalty (for non-serious crimes- moharebeh)
Iraq	Urgent appeal dated 17 December 2010		39 males	Response dated 11 March 2011	Other (statements that suspected terrorists would be executed??)
	Urgent appeal dated 3 November 2010		3 males	No response	Death penalty (non compliance with fair trial safeguards)
	Urgent appeal dated 22 October 2010		Group concern (2 identifiable males)	No response	Attacks or killings (of journalists)
	Urgent appeal dated 11 May 2010		Group concern	Response dated 11 march	Death in custody
Israel		Allegation dated 19 January 2011	3 males	No response	Excessive use of force
		Allegation letter dated 9	Group concern	No response	Excessive use of force

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
		June 2010			
		Allegation letter dated 8 April 2010	1 male	Response dated 9 April 2010 (acknowledgement)	Excessive use of force
Jamaica		Allegation letter dated 10 June 2010	70 unidentified individuals	Responses dated 11 June 2010, 18 June 2010 and 20 August 2010	Excessive use of force
Kenya		Allegation letter dated 3 February 2011	5 males	No response	Excessive use of force
	Urgent appeal dated 30 April 2010		1 male	No response	Other (Reprisals for cooperating with the Special Procedure Mechanism)
		Allegation letter dated 6 April 2010	7 males	No response	Excessive use of force
Kyrgyzstan		Allegation letter dated 16 March 2011	Group concern	No response	Other (accountability procedures for widespread violence)
		Allegation letter dated 16 April 2010	Group concern (78 identifiable individuals)	Response dated 26 May 2010	Excessive use of force (during post electoral demonstrations)
Libyan Arab Jamahiriya		Allegation letter dated 23 February 2011	Group concern (233 identifiable individuals)	No response	Excessive use of force (during demonstrations)
		Allegation letter dated 2 September 2010	Group concern (2 identifiable males)	Response dated 23 November 2010	Death penalty (non compliance with due process safeguards)
México	Urgent appeal		1 female	No response	Attacks or

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
	dated 28 December 2010				Killings
		Allegation letter dated 1 October 2010	2 males	No response	Attacks or Killings
		Allegation letter dated 15 September 2010	58 males and 14 females	Response dated 28 September 2010	Attacks or Killings+ Impunity
	Urgent appeal dated 11 May 2010		2 minors	No response	Attacks or Killings
	Urgent appeal dated 3 May 2010		Group concern	Response dated 10 May 2010	Attacks or Killings
	Urgent appeal dated 6 May 2010		1 Male and 1 Female	Responses dated 7 June 2010	Attacks or Killings+ death threats
Morocco		Allegation letter dated 3 February 2011	Group concern	No response	Excessive use of force
		Allegation letter dated 12 November 2010	1 minor	Response dated 1 February 2011	Excessive use of force
Mozambique		Allegation letter dated 15 September 2010	6 Individuals	No response	Excessive use of force (during demonstrations)
Myanmar		Allegation letter dated 19 April 2010	2 females and 2 children	No response	Excessive use of force
Nepal		Allegation letter dated 31	1 Male (Human Rights	Response dated 20 January 2011	Attack or Killing (unidentified

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
		August 2010	Defender)		gunman)
		Allegation letter dated 6 July 2010	1 male	No response	Death in custody
Nigeria		Allegation letter dated 20 December 2010	Group concern and 1 Human Rights Defender	No response	Attacks or killings (killings for suspected wizardly + death threats)
	Urgent appeal dated 28 April 2010			No response	Death penalty (statement by public official)
Occupied Palestinian Territory	Urgent appeal dated 29 April 2010		11 males	No response	Death penalty (for non serious crimes-treason)
Pakistan	Urgent appeal dated 23 December 2010		1 male	Response dated 30 December 2010 and 8 April 2011	Death penalty (non compliance with fair trial safeguards)
	Urgent appeal dated 22 November 2010		1 female	Response dated 23 November 2010 (acknowledgement)	Death Penalty (imposition for non-serious crimes-Blasphemy)
	Urgent appeal dated 1 October 2010		Group concern (21 identifiable individuals)	Response dated 4 October 2010 (acknowledgement)	Attacks or Killings (political activists)
		Allegation letter dated 13 August 2010	5 Males	Response dated 18 November 2010	Attacks or Killings (political activists)
	Urgent appeal dated 27 July 2010		2 males	Response dated 11 August 2010	Attacks or Killings (of religious minority by unidentified gunmen)

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
		Allegation letter dated 15 April 2010	3 males (religious minorities)	Response dated 11 June 2010	Attacks or Killings (of religious minority by unidentified gunmen)
		Allegation letter dated 8 April 2010	1 males	No response	Death in custody
Panama	Urgent appeal dated 6 August 2010		7 individuals including 3 minors	No response	Excessive use of force (during demonstrations)
Papua New Guinea		Allegation letter dated 24 November 2010	6 males	No response	Death in custody
Peru		Allegation letter dated 22 April 2010	5 individuals	No response	Excessive use of force (during demonstrations)
Philippines	Urgent appeal dated 29 November 2010		5 males and 1 female	Response dated 22 March 2011	Attack or Killing + death threats
		Allegation letter dated 19 July 2010	1 male	Response dated 20 October 2010	Attack or Killing (by unidentified gunmen)
Russian Federation		Allegation letter dated 14 January 2011	3 females and 2 males	No response	Impunity
		Allegation letter dated 29 October 2010	1 female (lawyer)	Response dated 20 December 2010	Other (ill-treatment of lawyer handling cases of serious Human Rights Violations)
Rwanda		Allegation letter	1 male (No response	Attack or killing (by

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
		dated 6 July 2010	journalist)		unidentified gunmen)
Saudi Arabia	Urgent appeal dated 1 November 2010		1 female (Minor)	No response	Death penalty for minors
Sri Lanka		Allegation letter dated 15 December 2010	Group concern	Response dated 12 February 2010	Armed conflict
		Allegation letter dated 13 October 2010	5 males	No response	Death in custody
Sudan		Allegation letter dated 26 March 2010	1 male	No response	Death in custody
Syrian Arab Republic	Urgent appeal dated 12 November 2010		1 female	No response	Death penalty (non compliance with fair trial safeguards)
		Allegation letter sent on 14 September 2010	2 males	No response	Death in custody
Thailand		Allegation letter dated 23 July 2010	1 male	Response dated 12 January 2011	Death in custody
		Allegation letter dated 6 July 2010	Group concern (88 identifiable individuals)	Response dated 19 November 2010	Excessive use of force (during demonstrations)
		Allegation letter dated 16 April 2010	Group concern (21 identifiable individuals)	Response dated 19 November 2010	Excessive use of force (during demonstrations)

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
Tunisia	Urgent appeal dated 14 January 2011		Group concern (21 identifiable individuals)	No response	Excessive use of force (during demonstrations)
Turkmenistan	Urgent appeal dated 1 November 2010		1 male	No response	Death threats
Uganda	Allegation letter dated 1 February 2011		1 male	No response	Attack or Killing (LGBT Defender)
United States of America	Urgent appeal dated 25 October 2010			Response dated 26 October 2010	Death penalty (insanity)
		Allegation letter dated 29 July 2010	1 male	No response	Attack or Killing (Targeted killing)
		Allegation letter dated 12 July 2010	6 males	No response	Excessive use of force
		Allegation letter dated 22 June 2010	1 male (minor)	No response	Excessive use of force (border control)
		Allegation letter dated 30 April 2010	3 females and 2 males	No response	Armed conflict
Venezuela		Allegation letter dated 23 November 2010	Group concern	Response dated 11 February 2011	Other (control of prisoners acts of violence)
	Urgent appeal dated 1 April 2010		1 female (Judge)	Responses dated 28 July 2010	Death threats

<i>Country</i>	<i>Urgent Appeal</i>	<i>Allegation letter</i>	<i>Subject of communication</i>	<i>Character of Reply</i>	<i>Violation alleged</i>
Yemen		Allegation letter dated 3 March 2011	Group concern (16 identifiable individuals)	No response	Excessive use of force (during demonstrations)
	Urgent appeal dated 23 December 2010		2 males (minors)	No response	Death penalty for minors
The authorities in Gaza	Urgent appeal dated 29 April 2010		2 males	No response	Death penalty (non-serious crimes-treason)
North Atlantic Treaty Organization		Allegation letter dated 30 April 2010	3 females and 2 males	Response dated 1 June 2010	Armed conflict
International Security Assistance Force		Allegation letter dated 30 April 2010	3 females and 2 males	No response	Armed conflict

Tabulation of communications requesting stay of executions

<i>Country</i>	<i>Urgent Appeal</i>	<i>Character of reply</i>	<i>Violation alleged and criminal charge</i>	<i>Name of Individual (s)</i>	<i>Status as far as could be established</i>
Afghanistan	Allegation letter of 14 January 2011	No response	Death penalty for non-serious crimes-apostasy	Mr. Sayed Mossa Mr. Shoaib Assadullah	Released Remains at risk of execution
China (People's Republic of)	Urgent appeal dated 13 August 2010	No response	Death penalty for non-serious crimes - Involvement in crime syndicate and intentional homicide	Mr.Fan Qihang	
Equatorial Guinea	Allegation letter dated 1	No response	Treason	Mr.José Abeso Nsue Mr.Manuel	Remains at risk of execution Remains at risk of

Country	Urgent Appeal	Character of reply	Violation alleged and criminal charge	Name of Individual (s)	Status as far as could be established
Iran (Islamic Republic of)	October 2010			Ndong Anseme Mr. Alipio Ndong Asumu Mr. Jacinto Micha Obiang	execution Remains at risk of execution Remains at risk of execution Remains at risk of execution
	Urgent appeal dated 11 February 2011	No response	Death penalty for minors-murder and Sodomy respectively	Ms. Fatemeh Salbehi Mr. Ehsan Rangraz Tabaatabaa'ie	Remains at risk of execution Remains at risk of execution
	Urgent appeal dated 11 January 2011	Government responded dated 4 February 2010	Death penalty for non-serious crimes-moharebeh	Mr. Jaafar Kazemi Mr. Mohammad Ali Haj-Aghaei Mr. Mohammad Ali Saremi Mr. Javad Lari Ms. Farah (also known as Elmira) Vazehan Mr. Abdolreza Ghanbari Mr. Ahmad Daneshpour Moqhaddam Mr. Mohsen Daneshpour Moqhaddam Ms. Zahra Bahrami Mr. Reza Sharifi Bukani	Executed on 24 November 2011 (non-official source) Executed on 24 November 2011 (non-official source) Executed on 28 January 2011 (non-official source) Remains at risk of execution Death sentence commuted Remains at risk of execution Remains at risk of execution Remains at risk of execution Executed on 29 January 2011 (non-official source) Remains at risk of execution
	Urgent appeal dated 31 December 2010	No response	Death Penalty for non-serious crimes - Agitation of the regime and insulting Islam	Mr. Saeed Malekpour	Remains at risk of execution
	Urgent appeal	No response	Death Penalty for	Mr. Behrouz Sadegh-Khanjani	Remains at risk of execution

Country	Urgent Appeal	Character of reply	Violation alleged and criminal charge	Name of Individual (s)	Status as far as could be established
	dated 30 December 2010		non-serious crimes apostasy	Mr. Yousef Nadarkhani	Remains at risk of execution
	Urgent appeal dated 30 December 2010	Response dated 15 February 2011	Death penalty for non-serious crimes (moharebeh)	Mr. Habibollah Latifi	Remains at risk of execution
	Urgent appeals of 25 November 2010 and 23 April 2010	Response dated 18 March 2011	Death Penalty for non-serious crimes - moharebeh	Mr. Hossein Khezri	Executed on 15 January 2011 (non-official source)
	Urgent appeals dated 29 September 2010 and 23 April 2010	Response dated 18 March 2011	Death Penalty for non-serious crimes - moharebeh	Ms. Zeynab Jalalian	Request for amnesty/commutation of sentence under review
	Allegation letter dated 31 August 2010	No response	Death penalty for minors - Sodomy	Mr. Ebrahim Hamidi	Remains at risk of execution
	Urgent appeal dated 24 June 2010	Response dated 28 March 2011	Death penalty for non-serious crimes - Adultery	Ms. Sakineh Mohammadi Ashtiani	Remains at risk of execution
Iraq	Urgent appeal dated 17 December 2010	Response dated 11 March 2011	Other (Links to Al-Qa'ida)	Mr. Azim Al-Zawi Mr. Ahmed Hussein 'Ali Aka "Mufti Of Anbar"	Remains at risk of execution Remains at risk of execution
	Urgent appeal dated 3 November 2010	No response	Death penalty non compliance with fair trial safeguards - Murder	Mr. Abdul Razzaq Mr. Tariq Aziz Mr. Sadoun Shakir Mr. Abed Hamoud	Remains at risk of execution Remains at risk of execution Remains at risk of execution Remains at risk of execution
Libyan Arab Jamahiriya	Allegation letter	Response dated 23 November 2010	Death penalty non	Ms. Juliana Okoro	Remains at risk of execution

Country	Urgent Appeal	Character of reply	Violation alleged and criminal charge	Name of Individual (s)	Status as far as could be established
	dated 2 September 2010		compliance with due process safeguards Murder	Mr.Haroun Mohamed SalehAwwali	Remains at risk of execution
Occupied Palestinian Territory/Authorities in Gaza	Urgent appeal dated 29 April 2010	No response	Death penalty for non serious crimes-treason	Emad Mahmoud Sa'd Sa'd Wael Sa'eed Sa'd Sa'd Mohammad Sa'd Mahmoud Sa'd Ayman Ahmad Awad Daghmah Mahran Abu Jodah Anwar Bargheet Saleem Mohammad El Nabheen Abed Kareem Mohammad Shrier Izz El Din Rasem Abed El Salam Daghri	Remains at risk of execution Remains at risk of execution Remains at risk of execution Remains at risk of execution Remains at risk of execution Remains at risk of execution Remains at risk of execution Remains at risk of execution Remains at risk of execution
Pakistan	Urgent appeal dated 23 December 2010	Response dated 30 December 2010	Death penalty non compliance with fair trial safeguards	Mr.Sarabjit Singh	Death sentence stayed for an indefinite period
	Urgent appeal dated 22 November 2010	Response dated 23 November 2010 (acknowledgement)	Death Penalty imposition for non-serious crimes- Blasphemy	Ms. Asia Bibi	Remains at risk of execution
Saudi Arabia	Urgent appeal dated 1 November 2010	No response	Death penalty for minors- (Murder	Ms. RiazanaRafeek (also known as Rizana Nasik)	Remains at risk of execution
Syrian Arab Republic	Urgent appeal dated 12 November 2010	No response	Death penalty non compliance with fair trial	Ms. Eliaza Al-Saleh	Executed on 4 November 2010 (non-official source)

Country	Urgent Appeal	Character of reply	Violation alleged and criminal charge	Name of Individual (s)	Status as far as could be established
United States of America	Urgent appeal dated 25 October 2010	Response dated 26 October 2010	safeguards-Accomplice to murder Death penalty-Murder	Mr. Jeffrey Landrigan	Executed on 27 October 2010 (non-official source)
Yemen	Urgent appeal dated 21 December 2010	No response	Death penalty for minors-Murder	Mr. Fuad Ahmed Ali Abdullah Mr. Muhammed Taher Thabet Samoum	Remains at risk of execution Remains at risk of execution

IV. Summary of cases transmitted and replies received

Afghanistan

Imposition of the death penalty on charges of apostasy.

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 14 January 2011, sent jointly with the Working Group on Arbitrary Detention; Independent Expert on Minority Issues; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr. **Sayed Musa** and Mr. **Said Shoaib Musawi**, two Christian converts who are currently detained in Kabul and Mazar-e-Sharif.

According to the information received

In late May 2010, the television network *Noorin* TV broadcast a film on Muslim converts to Christianity being baptized and participating in prayer gatherings in Afghanistan. The TV broadcast triggered nationwide protests, including in Kabul and Mazar-e-Sharif. Mr. Abdul Sattar Khawasi, a deputy of the lower house of Parliament, reportedly stated that those Afghans who appeared in this video film should be arrested and executed in public.

Mr. Sayed Musa, who had converted to Christianity about eight years ago, was arrested in Kabul on 31 May 2010, by security officers working with the Ministry of Interior. He was first detained in Oullayat Prison in Kabul, where he was reportedly suffering from sleep deprivation, sexual abuse, beatings and mockery by prison staff and other detainees. On 29 October 2010, Mr. Musa was transferred to Kabul Detention Center compound in Kabul Province, where his conditions of detention are said to be much better. Reportedly, no Afghan attorney has been willing to represent him and a foreign attorney who came to try to represent him was turned away by Afghan officials. Mr. Musa has maintained his refusal to renounce the Christian faith and his case is pending. It is feared that Mr. Musa could face a potential death penalty on charges of apostasy.

On 20 October 2010, Mr. Said Shoaib Musawi was arrested by Afghan National Police in Mazar-e-Sharif for giving a Bible to a man who later reported him to local authorities. He was charged with promoting Christianity. At a court hearing on 28 December 2010, Mr. Musawi was reportedly told to renounce the Christian faith and return to Islam within a week. Mr. Musawi reportedly confessed to the charges, however he resisted efforts to see him renounce his conversion from Islam. He remains detained, although the court in Mazar-e-Sharif, on 6 January 2011, dismissed the case against Mr. Musawi on the grounds that he was mentally unstable. The judge's ruling requires that Mr. Musawi be introduced to mental treatment under supervision of the prosecutor's office.

Without prejudging the accuracy of these allegations we wish to draw to the attention of your Excellency's Government that carrying out executions for apostasy would be incompatible with the international obligations that Afghanistan has undertaken under various instruments. Article 6(2) of the of the International Covenant on Civil and Political Rights, to which Afghanistan acceded on 24 January 1983, stipulates that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide." The death penalty is limited to the "most serious crimes". As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

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

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context and with respect to the allegation according to which Mr. Sayed Musa was subjected to sleep deprivation, sexual abuse, beatings and mockery by prison staff and other detainees until October 2010, we would like to draw your Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified,

and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would further like to refer to the recommendation made by the Special Rapporteur on torture which states "countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill-treatment. Training programmes should be considered to sensitize prison officials to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated according to gender, age and seriousness of the crime, alleged/committed; first-time prisoners should be segregated from repeat offenders and pre-trial detainees from convicted prisoners" (E/CN.4/2003/68, para. 26 (j)).

Moreover, we would like to appeal to your Excellency’s Government to ensure the right to freedom of religion or belief of Mr. Sayed Musa and Mr. Shoaib Musawi in accordance with article 18 of the Universal Declaration on Human Rights and article 18 of the International Covenant on Civil and Political Rights. Furthermore, the General Assembly, in its resolution 65/211, “urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end: (a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, *inter alia*, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practise freely one’s religion, including the right to change one’s religion or belief, is violated; (b) To ensure that existing legislation is not implemented in a discriminatory way or does not result in discrimination based on religion or belief, and that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights;” (resolution 65/211, para. 12).

With regard to the rights of minorities, including religious minorities, we draw the attention of your Excellency’s Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 requires that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”. Article 2 states that “Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. In addition, Article 4 of the Declaration states that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Sayed Musa and Mr. Shoaib Musawi are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Sayed Musa and Mr. Shoaib Musawi in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Have complaints been lodged by or on behalf of Mr. Sayed Musa and/or Mr. Shoaib Musawi?
3. Please indicate the specific conduct on the basis of which Mr. Sayed Musa and Mr. Shoaib Musawi have been arrested and detained. Please indicate how these are compatible with international norms, specifically with international norms and standards as contained, *inter alia*, in the International Covenant on Civil and Political Rights.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

Afghanistan (JAL): Follow-up on Killing of of five police officers by the Afghan Special Guards

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State.

Subject(s) of appeal: 6 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 21 July 2010, sent jointly with the Working Group on the Use of Mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination.

In this connection, we would like to remind your Excellency's Government of the communication we sent on 17 July 2009 concerning reports of **a shooting incident that occurred on 29 June 2009** between armed Afghan Special Guards (also referred to by the local population as "Afghan Special Forces") and Afghan National Police (ANP) inside the Attorney General's office in Kandahar, Afghanistan.

While the precise identity and chain of command of the Afghan Special Guards is unclear, according to information received, they are an Afghan private entity operating as a security company. Information received indicates that they may be working with or led by American Special Forces in Afghanistan, or armed international intelligence services.

According to the information received

On 29 June, 2009 at 11.45 hrs a shoot out erupted between Afghan Special Guards and Afghan National Police (ANP) inside the Attorney General's office, Kandahar.

It is alleged that the Afghan Special Guards went to the Attorney's General office to forcefully and unconditionally demand the release of a suspect, who had been arrested by the ANP in connection with a criminal offence for theft of a motor vehicle.

The Attorney General, Mr. Hafizullah Khaliqya, reportedly refused to release the suspect on the ground that it would be illegal and unconstitutional. He also advised the Afghan Special Guards that the arrested suspect will have to be charged for the offence as required in law. The Attorney General then reportedly called the Chief of Police (B.G. Matiullah Khan Qateh) and the Chief of Crime (Col. Abdul Khalik) for assistance. Both the Chief of Police and the Chief of Crime arrived at the scene accompanied by their body guards. Then, it is alleged that an argument erupted inside the Attorney General's office and that the Afghan Special Guards opened fire and killed the Chief of Police, the Chief of Crime and four other ANP officers. There are unconfirmed reports of civilian casualties.

According to police reports, 41 suspects have been arrested in connection with the incident and await to be charged before the court in Kabul. In addition, it was also reported that six ANP sustained gun wound injuries and were admitted at Mirwais provincial hospital for treatment.

Without expressing at this stage any opinion on the facts of the case, we would like to bring to your Excellency's Government's attention its concern regarding the allegation referred to above and would welcome detailed information on the following questions:

Are the facts alleged in the summary of the case, sent to your Excellency's Government on 17 July 2009, accurate including regarding the individuals and institutions involved?

Please provide details on the Afghan Special Guards involved in the shooting, and whether it is a private military and security company, and if so, whether it is registered in accordance with the Afghan procedure for regulating activities of private security companies in Afghanistan. Please also specify whether its personnel and weapons are registered with the Afghan authorities. Please specify the regulations that are in place to ensure the accountability of these Afghan Special Guards. If the force is a private company, which Governments or organizations does it contract its services to?

If the Afghan Special Guards involved in the shooting are not members of a private security company, please provide information on what authority, if any, they operate under, or what command structure, if any, they report to.

Please provide the details, and where available the results, of any investigation which may have been carried out in relation to this event. Please also indicate what steps are being taken to ensure that the alleged perpetrators of the shooting are investigated, tried, and convicted.

Angola

Killing of Mr. Alberto Graves Chakussanga, a journalist

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State ("Attacks or killings");

Subject(s) of appeal: 1 Male (Journalist)

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 5 October 2010, sent jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

In this connection, we would like to bring to your Excellency's Government's attention information we have received 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 your Excellency's Government.

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.

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

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the death of Mr. Chakussanga. We would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. In particular, we would refer to the International Covenant on Civil and Political Rights ("ICCPR"), to which Angola is a party, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons.

We recognize that your Excellency's Government has opened investigations into the death of Mr. Chakussanga. In this regard, we wish to bring to the attention of your Excellency's Government the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which stipulate that "There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses" (principle 9). Further it is provided 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" (principle 18). The Human Rights Committee has observed that failure to investigate and failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. Such failures lead to impunity which can encourage a repetition of the crimes by others in subsequent incidents (para.15) General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant.

With regard to the allegation that Mr. Chakussanga had received death threats prior to his death, we would like to draw the attention of your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in particular principle 4 which provides that "effective protection

through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". The Human Rights Committee has noted in the case of *William Eduardo Delgado Páez v. Colombia*, (Communication No. 195/1985) that "Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty. At the same time, States parties have undertaken to guarantee the rights enshrined in the Covenant. It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just because he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant". This was reiterated in the case of *Luis Asdrúbal Jiménez Vaca v. Colombia*, (CCPR/C/74/D/859/1999).

We wish to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "[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."

We urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the death of Mr. Chakussanga with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the unlawful killing, as well as to compensate the family of the victim. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

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

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

Has a complaint been lodged on behalf of Mr. Alberto Graves Chakussanga?

Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Will penal, disciplinary or administrative sanctions be imposed on the alleged perpetrators?

Please indicate whether any measures had been adopted to protect Mr Chakussanga in view of the death threats he received. Please indicate what measures are in place to provide protection to persons who are under threat of extra-legal executions.

Argentina

La muerte del Sr. Sergio Cárdenas y de dos menores de edad, Diego Alejandro Bonefoi y Nicolás Carrasco.

Violación alegada: Uso excesivo de la fuerza

Persona objeto del llamamiento: 1 hombre, 2 niños

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Argentina con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Carta de alegaciones con fecha 14 de septiembre de 2011 enviada por parte del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias

En este contexto, quisiera señalar a la atención urgente del Gobierno de Su Excelencia la información que he recibido en relación con la muerte del menor de edad Diego Alejandro Bonefoi, de quince años de edad, así como de las muertes relacionadas del menor de edad Nicolás Carrasco, y del Sr. Sergio Cardenas.

Según las informaciones recibidas

El día 17 de junio de 2010 aproximadamente a las 4:30 horas de la madrugada, personal policial afectado al funcionamiento de la Comisaría 28ª de la Ciudad de San Carlos de Bariloche, habrían intentado detener a cuatro jóvenes que, según la versión policial, habrían sido advertidos en actitud sospechosa.

Esta situación habría dado lugar a que se iniciara una persecución que tuvo al agente policial Sergio Colombil y al menor de edad Diego A. Bonefoi como protagonistas. La muerte de Diego A. Bonefoi se habría producido como consecuencia de un impacto de bala en la cabeza, efectuado por detrás.

En el marco de la investigación judicial, las primeras medidas adoptadas fueron dispuestas por el Juez Martín Lozada, quien habría llegado al lugar de los hechos en forma inmediata. Entre otras cosas, el Juez Martín Lozada habría dispuesto la detención del cabo Sergio Colombil, calificando al hecho como homicidio agravado y ordenando la producción de diversas medidas de prueba.

Sin embargo, tras los primeros pasos en la investigación, el Juez Lozada habría ordenado la citación del Sr. Colombil a fin de que formule su descargo, pero el imputado habría hecho uso de su derecho de negarse a declarar. Luego, la defensa habría formulado la recusación del Juez, en cuyo trámite intervino la Sala II de la Cámara Penal de Bariloche. La Cámara, entonces, habría resuelto hacer lugar a la recusación, apartar al Juez Lozada y ordenar el traslado de la causa al Juzgado de Instrucción n° 6 a cargo del Juez Ángel Gaimaro Pozzi. En la primera quincena de agosto, el Juez Pozzi habría procesado al funcionario policial Colombil por homicidio agravado, y le habría dictado la prisión preventiva.

A raíz de la muerte de Diego A. Bonefoi, los vecinos del lugar habrían iniciado una manifestación popular con movilización desde las afueras de la ciudad hacia la dependencia policial supuestamente involucrada. Ante dicha movilización, la respuesta policial habría sido una violenta represión por parte de personal común de la Policía de Río Negro y del grupo especial B.O.R.A (Brigada de Operaciones, Rescate y Antitumulto), quienes habrían actuado en la mayoría de los casos con los rostros encubiertos por pasamontañas, y en forma totalmente desproporcionada. Como consecuencia de la respuesta policial, habrían muerto los Sres. Nicolás Carrasco, menor de edad, y Sergio Cardenas.

Nicolás Carrasco no habría participado en la manifestación, y habría fallecido tras recibir cuatro impactos de bala de proyectiles de plomo alrededor de las 16:30 horas, cuando se hallaba frente a su casa mientras observaba lo que sucedía en la calle.

Por su parte, Sergio Cárdenas se habría encontrado en el medio de la calle por la que transitaban los policías mientras intentaba empujar a un chico para que se corriese hacia un costado y así escapar a los disparos. En ese momento habría resultado herido en la espalda por una bala de plomo. Esta bala habría provocado una profusa hemorragia y un paro cardíaco por shock hipovolémico, lo que habría provocado su muerte, alrededor de las 18:00 horas, antes de que pudieran trasladarlo a un hospital.

En el marco de la investigación judicial por las muertes de Nicolás Carrasco y de Sergio Cárdenas, mientras que se produjeron diversas medidas preliminares, todavía no se habría podido determinar las personas que habrían provocado las muertes de las víctimas. Según la información recibida, mientras que desde la fiscalía se intentó avanzar en la investigación, habría una muestra de desinterés respecto del esclarecimiento de los hechos por parte de las instancias ejecutivas de la Provincia de Río Negro.

Con respecto a la actuación de las fuerzas del orden en los casos enunciados arriba, sin implicar, de antemano, una conclusión sobre los hechos, quisiera llamar a la atención del Gobierno de Su Excelencia sobre los principios pertinentes del Derecho Internacional. El Pacto Internacional de Derechos Civiles y Políticos (PIDCP) prevé que cada individuo tiene derecho a la vida, y que ninguna persona será privada arbitrariamente de este derecho (artículo 6). En su Observación General sobre el artículo 6, el Comité de Derechos Humanos ha observado que: “los Estados Partes no sólo deben tomar medidas para evitar y castigar los actos criminales que entrañen la privación de la vida, sino también evitar que sus propias fuerzas de seguridad maten de forma arbitraria. La privación de la vida por las autoridades del Estado es una cuestión de suma gravedad. Por consiguiente, la ley debe controlar y limitar estrictamente las circunstancias en que dichas autoridades pueden privar de la vida a una persona”. El artículo 6 del PIDCP exige por lo tanto que el uso de la fuerza por las fuerzas estatales sea hecho en la medida de lo estrictamente necesario, y que la fuerza sea usada de manera proporcional al objetivo perseguido. Además, dado que dos de las tres víctimas eran menores de edad, también se aplica la Convención sobre los Derechos del Niño, que – en su artículo 6 - obliga los Estados parte a proteger el derecho intrínseco de cada niño a la vida.

A este respecto, me gustaría llamar la atención del Gobierno de Su Excelencia sobre los principios 4, 5 y 9 de los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley (adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en La Habana (Cuba) del 27 de agosto al 7 de septiembre de 1990). Según el principio 4 “Los funcionarios encargados de hacer cumplir la ley, en el desempeño de sus funciones, utilizarán en la medida de lo posible medios no violentos antes de recurrir al empleo de la fuerza y de armas de fuego”. En este mismo sentido, el principio 5 señala que “Cuando el empleo de las armas de fuego sea inevitable, los funcionarios encargados de hacer cumplir la ley, a) Ejercerán moderación y actuarán en proporción a la gravedad del delito y al objetivo legítimo que se persiga; b) Reducirán al mínimo los daños y lesiones y respetarán y protegerán la vida humana; c) Procederán de modo que se presten lo antes posible asistencia y servicios médicos a las personas heridas o afectadas; d) Procurarán notificar lo sucedido, a la menor brevedad posible, a los parientes o amigos íntimos de las personas heridas o afectadas”. Asimismo, el principio 9 establece que: “no emplearán armas de fuego contra las personas salvo en defensa propia o de otras personas, en caso de peligro inminente de muerte o lesiones graves... y sólo en caso de que resulten insuficientes medidas menos extremas para lograr dichos objetivos. En cualquier caso, sólo

se podrá hacer uso intencional de armas letales cuando sea estrictamente inevitable para proteger una vida”.

Con respecto en particular a la investigación judicial por las muertes de Nicolás Carrasco y de Sergio Cárdenas me gustaría señalar que, como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social).

Quisiera instar al Gobierno de Su Excelencia a que adopte todas las medidas necesarias para investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiera asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos.

Es mi responsabilidad, de acuerdo con el mandato que me ha sido otorgado por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a mi atención. En este sentido, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Ha sido presentada alguna queja por parte de los familiares de las víctimas?
3. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de estos casos.
4. Por favor, sírvanse proporcionar información detallada sobre los desarrollos de las diligencias judiciales que se hayan iniciado con relación a estos casos. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/perpetradores?

Comm of 14.09 10 in pdf

Argentina: Asesinato del Sr. Adams Ledesma Valenzuela, defensor de derechos humanos

Violación alegada: Impunidad

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: satisfactoria en términos generales

Observaciones del Relator Especial El Relator Especial agradece al Gobierno de Argentina la respuesta proporcionada a la comunicación con fecha 1 de octubre de 2010. El Relator Especial toma nota de las investigaciones llevadas a cabo por parte del Gobierno, pero muestra su preocupación por el asesinato del Sr. Ledesma Valenzuela.

Carta de alegaciones con fecha 1 de octubre de 2010, enviada junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, y el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia información que hemos recibido 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.

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.

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.

Se expresa 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.

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

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

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

requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

Además, quisiéramos referirnos a los artículos siguientes:

- El artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados.

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

Además, nos permitimos hacer un llamamiento urgente al Gobierno de Su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

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

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, por lo que estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?

¿Ha sido presentada alguna queja en nombre de la víctima?

Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.

Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/ perpetradores?

Por favor, sírvanse informar sobre las medidas adoptadas para garantizar la protección de los familiares del Sr. Ledesma Valenzuela.

Respuesta del Gobierno

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

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.

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

Austria

Alleged assassination plot of Mr. Farid Tukhbatullin, a human rights defender

Violation alleged: Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures.

Subject(s) of appeal: 1 Male (Human Rights Defender)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response provided by the Government of Austria and commends the measures taken by Government branches and agencies to provide protection to Mr. Tukhbatullin.

Urgent Appeal dated 1 November 2010, sent jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

In this connection, we would like to draw the attention of your Excellency's Government to information we have received 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. 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

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.

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.

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.

It is 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.

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.

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.

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.

Concern is 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 is also expressed for the physical and psychological integrity of Mr. Farid Tukhbatullin and his family.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

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

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

We would also like to draw the attention of your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 4 provides that "effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". Further, Principle 8 states that "Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation....".

We urge your Excellency's Government to take all necessary measures to guarantee the protection of Mr. Farid Tukhbatullin and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured.

In view of the urgency of the matter, we would appreciate a response on the steps taken by your Excellency's Government to guarantee the protection of Mr. Farid Tukhbatullin in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide details of any measures which have been taken to ensure the physical and psychological integrity of Mr. Farid Tukhbatullin. If no such measures have been taken, please explain why.

Please, be informed that a communication regarding this case has also been sent to the Government of Turkmenistan. The present communication is being submitted to your Excellency's Government since the alleged victim resides in your territory.

Reply from the Government of Austria dated 10 December 2010

Austria gratefully acknowledges the urgent appeal by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders regarding the case of Mr. Farid Tukhbatullin.

Austria considers the above-stated case serious and confirms that there is a clear risk situation. The facts as they are set forth in the urgent appeal of the Special Rapporteurs correspond with those available to the competent Austrian authorities.

Immediately after the alleged threats against Mr. Farid Tukhbatullin were brought to the attention of Austria, the competent authorities contacted Mr. Tukhbatullin subsequently taken all measures to ensure Mr. Tukhbatullin's personal safety in Austria.

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 Farid Tukhbatullin very seriously and provide all necessary protective measures to ensure Mr. Tukhbatullin's personal safety in Austria.

Kingdom of Bahrain

(JUA) Deaths due to excessive use of force during demonstrations

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: Group concern (7 identifiable males)

Character of reply: Translation awaited

Observations of the Special Rapporteur

The Kingdom of Bahrain replied to the communication below on 5 April 2011. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report.

In respect of this urgent appeal, the Special Rapporteur refers to the statement issued on 18 February 2011, jointly with other Special Rapporteurs, in which he urged the Government of Bahrain to guarantee the right to peaceful protest and immediately cease the use of excessive and lethal force.¹

Urgent appeal dated 17 February 2011, sent jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Government to information we have received 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.

In this regard, we wish to recall that restrictions to fundamental freedoms and rights in Bahrain have been recently addressed in several urgent appeals, notably in the

¹ Available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10737&LangID=E>.

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.

According to the information received

In the context of ongoing protests across the country, security officials have reportedly used tear gas, rubber bullets, shotguns and live ammunitions against peaceful demonstrators to contain the massive protests. Such excessive use of force has 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.

The following cases have in particular been brought to our attention:

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.

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-Matroom, aged 32, was severely injured and died later in hospital.

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.

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.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Government to ensure that the rights and freedoms of the peaceful protestors are guaranteed in compliance with the international obligations entered into by Bahrain.

We wish to stress that everyone has the fundamental right to life and security of the person as set forth in article 3 of the Universal Declaration of Human Rights (UDHR) and in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), acceded to on 20 September 2006. The right to life shall be protected by law and no one shall be arbitrarily deprived of his life. We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Bahrain acceded to on 6 March 1998.

With regard to the allegations of excessive use of force by security officials against peaceful protestors and people in proximity to the protests areas, we wish to stress that “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty” according to article 3 of the Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979. Furthermore, we wish to recall the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. In particular, principle 4 requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force. Principle 5 further states that “law enforcement officials shall “(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life” and “(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment” whenever the lawful use of force and firearms is unavoidable. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life according to principle 9.

In respect of the alleged deaths as a result of the excessive use of force by the riot police, we wish to refer your Government to the “obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ...to grant adequate compensation within reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions” (Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, para. 4).

We would also like to appeal to your Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

In this regard, we would also like to appeal to your 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 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.”

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

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

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

- article 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.

We therefore urge your Government to immediately take all necessary measures to safeguard the fundamental rights and freedoms of its citizens, to investigate the alleged cases of deaths and allegations of excessive use of force, and to bring their perpetrators to justice. In order to prevent further deaths and injuries to the citizens of Bahrain and to enable the peaceful demonstrations to take place, we urge your Government to refrain from using disproportionate use of force against demonstrators and people in protests areas in accordance with international norms on the use of force, and suggest that your Government gives clear instructions to law enforcement and security officials in this regard.

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

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report

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

1. Are the facts alleged in the above summary of the cases accurate?
2. Please indicate what instructions security forces have received, in particular with regard to the use of force. Have any penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases.
4. Please indicate whether compensation will be provided to the victims or their families.

Belarus

Imminent execution of Mr. Aleh Gryshkautstou, and Mr. Andrei Burdyka

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: Translation awaited

Observations of the Special Rapporteur

The Government of Belarus replied to the communication below on 12 April 2011. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report.

Urgent appeal dated 3 March 2011, sent jointly with Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the imminent execution of Mr. Aleh Gryshkautstou**, aged 29, and **Mr. Andrei Burdyka** aged 28.

According to information received

On 14 May 2010, Mr. Aleh Gryshkautstou and Mr. Andrei Burdyka were sentenced to death by shooting. They were convicted of premeditated murder, armed assault, arson, kidnapping of a minor, theft and robbery. On 17 December 2010, the Supreme Court in Minsk turned down their appeal.

On 24 December 2010, Mr. Burdyka's mother received a letter from him indicating that he would be seeing a priest on 23 February 2011. We are informed that this is an indication that his execution is imminent.

Our main concerns relate to information we have received concerning the lack of transparency in post-conviction proceedings with regard to capital punishment cases. Information made available to us alleges that prisoners are given no prior notification that they are about to be executed. Their families are not given the opportunity for a last visit to the prisoner and they are informed days or sometimes weeks later that the execution has taken place. The body of the executed prisoner is not handed over to the family and the place of burial is not disclosed to them.

These concerns have been the subject of previous communications of 5 November 2009, and 13 October 2009 in the cases of Mr. Andrei Zhuk and Mr. Vasily Yusepchuk respectively. We acknowledge the two responses from your Excellency's Government of 18 December 2009, which gave detailed accounts regarding the facts of the cases and the legal regime governing capital punishment.

We have noted the response of your Excellency's Government in relation to the case of Mr. Yusepchuk, which indicated that "the corpse is not surrendered for burial, and no information is provided on the place of burial" and that "owing to the special nature of the punishment, the carrying out of a death sentence is subject to a number of moral and ethical restrictions aimed at protecting the rights and freedoms of the death row prisoner and his or her family members and the victims, their families and other members of society."

In order to ensure that convicted person's due process rights are not violated in post-conviction proceeding in capital punishment cases, we would appreciate it if your Excellency's Government could clarify and provide the legal justification as to; (a) how the lack of transparency in post-conviction proceedings complies with international law; (b) why the corpse is not surrendered for burial; (c) what are the "moral and ethical" bases of the restrictions imposed when carrying out death sentences; and d) how do those restrictions protect the rights and freedoms of the prisoner and his or her family.

As indicated in previous communication, secrecy in post-conviction proceedings in capital punishment cases has been found to violate international legal obligations. We would like to bring to the attention of your Excellency's Government the report submitted to the Human Rights Council by my mandate on "Transparency and the imposition of the death penalty" (E/CN.4/2006/53/Add.3), which observed that "the failure to provide notice to the accused of the timing of his own execution may undermine due process rights. Due process rights and other safeguards on the right to life remain even after a person has been convicted of a crime and sentenced to death. Further it was observed that "[r]efusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation." The practice of informing prisoners of their impending execution only moments before they die, and families only later, is "inhuman and degrading and undermine[s] the procedural safeguards surrounding the right to life." (paras. 26 and 32).

The Human Rights Committee in the case of *Banderenko v Belarus* (CCPR/C/77/D/886/1999) found that the lack of transparency had subjected the mother of a condemned prisoner to a state of anguish and mental stress amounting to inhuman treatment in violation of article 7 of the International Covenant on Civil and Political Rights, ratified on 12 November 1973. The Human Rights Committee observed that "[c]omplete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the [mother of the convict] of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounts to inhuman treatment of the [mother of the convict], in violation of article 7 of the Covenant." Similar observations were made in the case of *Lyashkevish v Belarus* (Communication No. 887/1999 para 9.2).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Mr. Aleh Gryshkautstou and Mr. Andrei Burdyka are respected. Considering the irreversible nature of capital punishment, this can only mean suspension of the death sentence against them until the concerns on possible violations of international law have been clarified.

We would appreciate information from your Excellency's Government clarifying how it intends to address the concerns raised in this communication. We wish to thank your Excellency's Government in advance for its cooperation. We undertake to ensure that your Excellency's Government's response is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Brazil

Killing of Mr. Paulos Santos Sousa and assassination attempts against Mr. Alexandre Anderson de Souza (Human Rights Defenders)

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private cooperating with or tolerated by the State and death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures.

Subject(s) of appeal: 2 Males (Human Rights Defenders)

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 1 December 2010, sent jointly with the Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the situation of Mr. **Alexandre Anderson de Souza**, head of the Associação dos Homens do Mar – AHOMAR (Association of Seamen), and his wife, Ms. Daize Menezes de Souza. AHOMAR is an organisation which aims to defend the rights of fisher folk in Rio de Janeiro, in particular those affected by the construction of a gas pipeline for the company Petrobras, which AHOMAR opposes. Petrobras is a publicly traded corporation, the majority stockholder of which is the Government of Brazil, working in the exploration, production, refining, trade and transportation of oil and natural gas in the country.

According to the information received

On 31 July 2010, at approximately 6:30 p.m., Mr. Alexandre Anderson de Souza and his wife survived an apparent assassination attempt by two armed individuals. It is reported that as they were returning to their home, Mr. Anderson de Souza and his wife noticed two unidentified armed individuals observing their house and looking in the windows to establish whether anyone was present. Mr. Anderson subsequently approached two military police officers who were present in the vicinity and informed them of what was happening, before retreating out of sight.

As the two officers approached the house, the two unidentified men opened fire on them, leading to a shoot-out which lasted approximately 15 minutes. One of the officers was slightly injured, and one of the alleged perpetrators was hospitalised. The other alleged perpetrator was reportedly taken into custody before being released.

It is reported that a State Deputy from the Socialism and Freedom Party subsequently contacted the police to request information on the case, but was told that no such incident had occurred, despite the fact that Mr. Anderson de Souza had reported the incident to the Magé Municipality Police while the shootout was ongoing.

The alleged assassination attempt in July 2010 against Mr. Anderson de Souza follows the killing, on 22 May 2009, of Mr. Paulos Santos Sousa, former Treasurer of AHOMAR. It is reported that Mr. Santos Sousa was taken from his home and in front of his family was beaten and questioned regarding documents belonging to AHOMAR before being shot five times in the head. The killing of Mr. Santos Sousa reportedly took place on the same day that work on the Petrobras pipeline, opposed by AHOMAR, was suspended by a local environmental agency; it is further reported that prior to this killing, other members of AHOMAR had received death threats. Furthermore, it is reported that Mr. Anderson de Souza survived a previous assassination attempt, on 1 May 2009, when he was shot at by two individuals in the area near the gas pipeline construction site.

On 6 September 2010, the wife of Mr. De Souza, Ms. Daize Menezes de Souza, allegedly received a series of phone calls threatening her and her husband. Moreover, throughout October and November 2010, armed men have reportedly walked in an intimidating manner around Mr. De Souza's house. Gun shots have been heard near the house on several occasions at night.

Reportedly, Mr. Anderson de Souza has suffered several assassination attempts, the last one in May 2009 when unidentified individuals shot at him four times. In addition, according to the information received, on 1 September 2009, the premises of AHOMAR were raided by the State military police without a warrant or any explanation as to the reasons of their intrusion. During this incident, it is alleged that Mr. Anderson de Souza was nearly abducted by the military police.

Since 8 September 2010, Mr. Anderson de Souza has been granted police protection as part of the National Protection Programme for human rights defenders of the Federal Government of Brazil. However, it is reported that he and his wife is still face credible and serious risks connected to his work defending the rights of fisher people in Rio de Janeiro, in particular those affected by the construction of a gas pipeline for the company Petrobras. It is reported that even the police officers who escort Mr. De Souza feel threatened and fear for their lives due to the work they are doing.

Grave concern is expressed for the physical and psychological integrity of Mr. Alexandre Anderson de Souza, his wife and other members of AHOMAR. Further concern is expressed that the alleged assassination attempts, as well as the killing of Mr. Paulos Santos Souza, may be related to their peaceful and legitimate human rights activities, particularly in opposing the aforementioned Petrobras gas pipeline project.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles applicable under international law to this case.

In connection to the killing of Mr. Paulos Santos Souza, former Treasurer of AHOMAR, we would refer your Excellency's Government to the International Covenant on Civil and Political Rights ("ICCPR") (acceded by your Excellency's Government to on 24 January 1992), which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the "Mandate of the Special Rapporteur on

extrajudicial, summary or arbitrary executions” (OP 4), the Human Rights Council reiterates that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this obligation includes the obligation “to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions as stated in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions”.

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

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

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Anderson de Souza and the members of AHOMAR are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Anderson de Souza and his wife in compliance with the above international instruments.

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

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

Has a complaint been lodged by or on behalf of the alleged victim?

Please provide the details of the measures, if any, which have been taken to ensure that the protection that Mr. Alexandre Anderson de Souza and his wife receive, is effective in order

to guarantee their physical and psychological integrity. In addition, please provide information on the measures taken to ensure the security of the members of AHOMAR.

Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

Please provide information on any investigations and prosecutions that have been undertaken in relation to the killing of Mr. Paulos Santos Souza.

People's Republic of China: Excessive use of force in Sichuan Province

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 4 individuals

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 14 September 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we would like to bring to your Excellency's Government's attention to information we have received concerning **the death of four people** which occurred after Chinese security forces opened fire on persons of Tibetan origin who were protesting in Palyul County's Sharchu Gyashoed village, Sichuan Province.

According to information received

On 18 August 2010, Chinese security forces allegedly opened fire during a peaceful protest in Palyul County's Sharchu Gyashoed village, killing 4 protestors of Tibetan origin and injuring several more. About 100 persons of Tibetan origin participated in the protest outside the county government offices. The protest was organized in response to the expansion of gold mining activities in the area, which are allegedly destroying farmland and causing harm to the local environment.

Prior to the shooting, Chinese security forces reportedly used a harmful "incapacitating" gas to render the protestors unconscious. After witnessing members of the Chinese security forces loading unconscious protestors into a truck, a number of persons of Tibetan origin confronted these members of the security forces. A scuffle ensued, resulting in the security forces opening fire.

While we do not wish to prejudge the accuracy of these allegations, we would like to request your Excellency's Government to seek clarification of the circumstances regarding these deaths.

In terms of international law, law enforcement officials may only use force when it is strictly necessary and only to the extent required, in the circumstances, for the performance of their duties. This means that the use of force must be proportionate to the legitimate objective to be achieved. The use of firearms will only be considered a proportionate response where less extreme measures are insufficient to restrain or apprehend the suspect, and the suspect either offers armed resistance or otherwise jeopardizes the lives of others. (The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979; read with the United Nations Basic Principles on the Use of

Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990).

The Special Rapporteur on extrajudicial, summary or arbitrary executions has, on a previous occasion, reported to the General Assembly that law enforcement officials should attempt to resolve situations through non-violent means. Suspected offenders should firstly be restrained or apprehended without using such force that carries a high risk of death. If the circumstances are such that the use of firearms are 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” (A/61/311, paras 41- 45).

We would like to remind your Excellency’s Government of the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 9 stipulates that there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions...” This principle was reiterated by Resolution 8/3 of the Human Rights Council, which provides that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights which states that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

We would like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 20(1) of the Universal Declaration of Human Rights which stipulates that “everyone has the right to freedom of peaceful assembly and association.”

We therefore, urge your Excellency’s Government to take all necessary measures to ensure that the deaths of the four protestors are promptly, independently and thoroughly investigated, to ensure the accountability of any person or persons responsible for their deaths and to prevent further recurrence of such acts.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please explain which authorities are competent to investigate and prosecute members of the security forces charged with allegations of unlawful killings. What steps have been taken to hold those responsible for these killings criminally accountable (as material perpetrators, commanders, or instigators)?
3. Please provide the details and, where available, the results of any criminal investigation, prosecution and trial carried out in relation to the deaths that occurred on 18 August 2010.

4. Please indicate whether compensation has been or will be provided to the families of the victims.
5. Please indicate what broader steps, if any, are being taken to address the use of force by the security forces, including measures that are taken to comply with the rules and principles pertaining to proportionality and necessity.

People's Republic of China

Imposition of the death penalty for non-serious crimes- Mr. Fan Qihang

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 13 August 2010, sent jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr. **Fan Qihang**.

According to the information received

Mr. Fan Qihang was arrested on 26 June 2009 and was reportedly subjected to torture and ill-treatment in an unofficial place of detention. Mr. Fan was deprived of sleep, beaten and kicked, had his hands shackled behind his back and hung from iron bars for five days, and also had his hands and feet shackled behind his back and his body bent forward in a 90 degree angle for ten days. He was also forced to confess to various crimes, including "forming, leading or taking active part in organizations in the nature of criminal syndicate" and "intentional homicide".

Mr. Fan was not allowed to meet with his lawyer until November 2009, after he had been transferred to a detention centre. On 10 February 2010, he was sentenced to death, although none of the 187 witnesses lined up for the trial showed up. The Chongqing Municipal Higher People's Court upheld the death sentence on 31 May. His case is now being reviewed by the Supreme People's Court. During the meeting with Mr. Fan, his lawyer video-taped it and submitted the video recordings to the Supreme People's Court, but he has yet to receive a response.

Without in any way implying any determination on the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Fan Qihang. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall

remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would also like to draw your Excellency's Government's attention to article 15 of the Convention against Torture provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” We also recall that paragraph 6(c) of Human Rights Council resolution 8/8 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in Article 7 of the International Covenant on Civil and Political Rights.

With regard to the allegation that Mr. Fan Qihang was sentenced to death for various crimes including “forming, leading or taking active part in organizations in the nature of criminal syndicate”, we would like to respectfully remind your Excellency's Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53), This would exclude charges of “forming, leading or taking active part in organizations in the nature of criminal syndicate” from those for which the death penalty can be imposed under international law.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Fan Qihang are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

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

People's Republic of China: Killing of three Chinese citizens at that China-DPRK border

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur sent a courtesy copy of a communication addressed to the Democratic Peoples Republic of North Korea to the Peoples Republic of China.

Allegation letter dated 17 June 2010 sent by the Special Rapporteur on summary, extrajudicial or arbitrary executions

I would like to draw the attention of your Excellency's Government to a communication I have sent to the Democratic Peoples Republic of Korea (DPRK) concerning information I received regarding the killing of three Chinese citizens at the China-DPRK border near Dandong, in the Liaoning Province of China.

Colombia

Asesinato del Sr. Óscar Maussa, defensor de derechos humanos

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: satisfactoria en términos generales

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia la respuesta proporcionada a la comunicación con fecha 2 de diciembre de 2009. El Relator Especial muestra su grave preocupación por el asesinato del Sr. Maussa, sobre todo llama su atención el hecho de que su asesinato pudiera haber estado relacionado con su labor en la defensa de los derechos humanos. Por lo cual, el Relator Especial insta al Gobierno a promover la protección de los defensores de derechos humanos de una manera que garantice su integridad física y psicología.

Llamamiento urgente con fecha del 2 de diciembre de 2009, enviado junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con el presunto asesinato del Sr. Óscar Maussa, líder de la Cooperativa de Trabajadores Agropecuarios de Blanquicet (COOTRAGROBLAN). El Sr. Maussa y COOTRAGROBLAN llevaban a cabo acciones de reclamación de tierras usurpadas por grupos paramilitares en Urabá, a través de varios procedimientos judiciales. Un llamamiento urgente en relación con las amenazas de muerte contra el Sr. Maussa fue enviado por la Representante Especial del Secretario-General para los defensores de los derechos humanos el 6 de noviembre de 2007. Hasta la fecha, no se ha recibido ninguna respuesta del gobierno de Su Excelencia en relación con la previa comunicación.

Según las informaciones recibidas, El 24 de noviembre de 2010, el Sr. Óscar Maussa habría sido asesinado en la vereda Cañito del municipio de San Juan Nepomuceno, departamento

de Bolívar. Posteriormente, un trabajador habría descubierto su cuerpo en su finca, “La Poza del Guamo”. Según se informa, al ser descubierto, el cuerpo del Sr. Moussa se encontraba bocabajo y con las manos atadas. Se especula que el Sr. Maussa habría muerto a causa de un golpe contundente que se le dio en la cabeza con un objeto. Además, se habría descubierto que las pertenencias en la casa del Sr. Maussa habían sido registradas.

Anteriormente, el 5 de octubre del 2010, a raíz del proceso penal abierto por la denuncia que el Sr. Maussa había presentado, el Fiscal 36 de la Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario habría ordenado la detención preventiva de un integrante de un grupo paramilitar operando en la región, cuyo nombre sería conocido por los Relatores Especiales. Éste individuo habría sido imputado como coautor de los delitos de concierto para delinquir con fines de paramilitarismo, invasión de tierras y edificios, y desplazamiento forzado.

Previamente, el 1 de septiembre de 2006, la Comisión Interamericana de Derechos Humanos (CIDH) habría otorgado medidas cautelares a la familia del Sr. Maussa así como las de otros miembros de COOTRAGROBLAN, quienes habrían manifestado temor ante posibles represalias tras no ceder ante las presiones de los paramilitares que habían tomado posesión de sus tierras y activar el proceso judicial para lograr la restitución de las mismas.

Se expresa grave preocupación por la integridad física y psicológica de la familia del Sr. Óscar Maussa y por las alegaciones de que el supuesto asesinato del Sr. Maussa pudiera estar relacionado con sus actividades de promoción y protección de los derechos humanos, en particular de la reclamación de tierras ocupadas por paramilitares en Urabá. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en Colombia en los últimos meses.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos (PIDCP), este último ratificado por Colombia el 29 de octubre de 1969). Los artículos 3 y 6 de estos instrumentos respectivamente garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que estos derechos sean protegidos por la ley y que nadie sea arbitrariamente privado de su vida.

En este contexto, quisiéramos recordar la Observación General 31 al PIDCP del Comité de Derechos Humanos que establece, en el párrafo 8, que “sólo se podrán cumplir plenamente las obligaciones positivas de los Estados Parte de garantizar los derechos reconocidos en el Pacto si el Estado protege a las personas, no sólo contra las violaciones de los derechos reconocidos en el Pacto que cometan sus agentes, sino también contra los actos que cometan particulares o entidades”, y que “puede haber circunstancias en las que, por no haberse garantizado los derechos reconocidos en el Pacto como se dispone en el artículo 2, los Estados Parte infrinjan estos derechos permitiendo que particulares o entidades cometan tales actos o no adoptando las medidas apropiadas o no ejerciendo el cuidado debido para prevenir, castigar, investigar o reparar el daño así causado”.

Finalmente, como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (Resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En

particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias”.

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

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

Apelamos pues al Gobierno de Su Excelencia a fin que conduzca una investigación imparcial y transparente sobre las circunstancias que rodearon la muerte del Sr. Maussa, a fin de tomar todas las medidas judiciales y disciplinarias que aseguren que los responsables sean traducidos en justicia, así como a fin de compensar a las familias de las víctimas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos se repitan.

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

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Ha sido presentada alguna queja en nombre de la supuesta víctima?
3. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.
4. Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/ perpetradores?

5. Por favor, sírvanse proporcionar información detallada sobre cualquier medidas de protección que se haya otorgado a la familia del Sr. Óscar Maussa, así como otros miembros de la Cooperativa de Trabajadores Agropecuarios de Blanquicet.

Respuesta del Gobierno

Mediante carta fechada 14 de febrero de 2011, el Gobierno de Colombia respondió al llamamiento urgente con fecha 2 de diciembre de 2010.

De manera respetuosa, el Estado se permite informar a los Honorables Relatores que la exactitud de los hechos denunciados será determinada mediante sentencia judicial de lo cual se informará oportunamente.

Sin embargo, a la luz de la información recopilada hasta la fecha, es posible señalar de manera preliminar que el señor Maussa habría sido asesinado el día 24 de noviembre de 2010, en la vereda “Cañito” del municipio de San Juan Nepomuceno, departamento de Bolívar.

Al respecto, es pertinente señalar que una vez conocido el homicidio del señor Maussa Contreras, la Fiscalía 22 de Carmen de Bolívar dio inicio a la investigación penal pertinente.

De manera respetuosa, el Estado colombiano entiende que la pregunta número tres del cuestionario presentado por los Honorables Relatores se subsume dentro de la pregunta número cuatro del mismo, por lo cual, el Estado colombiano dará contestación a dicha pregunta, en la siguiente numeral.

Al respeto, es de señalar que la Fiscalía 22 de Carmen de Bolívar (departamento de Bolívar) está adelantando la investigación penal con ocasión del homicidio del señor Maussa. En este sentido, el Estado colombiano se permite resaltar que la investigación penal continúa activa.

En el marco de dicha investigación penal, la Fiscalía de conocimiento llevó a cabo el pertinente programa metodológico² para determinar las circunstancias de tiempo, modo y lugar en que ocurrieron los hechos, así como también para identificar a los presuntos autores de los hechos.

De igual forma, el Fiscal de conocimiento ordenó a la Seccional de Investigaciones Judiciales de la Policía Nacional (en adelante SIJIN), llevar a cabo diversas diligencias de entrevistas y labores de vecindado tendientes a esclarecer los hechos, así como la recolección de elementos materiales probatorios y evidencia física.

Adicionalmente, la Policía Judicial informó que se solicitó a la Fiscalía de conocimiento ordenar la búsqueda selectiva de bases de datos a una empresa de comunicación celular, con el propósito de obtener el reporte de llamadas entrantes y salientes y mensajes de texto del número telefónico perteneciente al señor Maussa, así como de dos números telefónicos, uno de los cuales se encuentra adscrito a un sospechoso de haber participado en el crimen.

Finalmente, el Estado colombiano se permite informar que desde la Fiscalía General de la Nación se está analizando la viabilidad jurídica de solicitar a la Dirección Nacional de Fiscalías la reasignación del mencionado expediente, a la Unidad Nacional de Derechos Humanos.

² El programa metodológico se entiende como una herramienta de trabajo que permite organizar y explicar la investigación con el fin de identificar y asegurar los medios cognoscitivos accesorios para demostrar, más allá de duda razonable, la ocurrencia del delito y su autor o partícipo.

Sobre el particular, el Estado colombiano se permite informar que el día 7 de diciembre de 2010 se llevó a cabo una reunión de seguimiento y concertación de las medidas cautelares solicitadas por la ilustrada Comisión Interamericana de Derechos Humanos a favor de cuatro Familias de Cooperativa de Trabajadores agropecuarios de Blanquicel (en adelante COOTRAGLOBAN) (MC 199-06).

El beneficiario manifestó que el celular que tiene a su disposición el señor Maussa Contreras y que fue entregado por el Programa de Protección del Ministerio del Interior y de Justicia en el marco de las medidas cautelares, fue hurtado al momento de ser asesinado. Al respecto, el Ministerio del Interior y de Justicia se comprometió a adelantar las gestiones pertinentes para reponer al respectivo medio de comunicación celular.

Posteriormente, el día 9 de diciembre de 2010, se llevó a cabo una reunión con delegados de la Agencia Presidencial para la Acción Social y la Cooperación Internacional (en adelante Acción Social), con el propósito de dar a conocer de primera mano las solicitudes realizadas por la familia del señor Oscar Maussa y conocer la respuesta de Acción Social sobre el particular.

Acción Social se comprometió a activar los mecanismos internos. En este sentido, Acción Social comenzará por brindar la atención primaria para que se revise la situación de los miembros del núcleo familiar, verificar su lugar de residencia actual y procurar que entidades del sistema nacional y regional atiendan las solicitudes de los beneficiarios, considerando que los recursos de salud y educación son de carácter regional.

En este sentido el Grupo de Derechos Humanos de Acción Social se comprometió a hacer seguimiento permanente, desde el nivel central, a la situación de atención primaria a favor de la familia de la señora Caldera, hasta que haya una definición por parte del núcleo familiar sobre dónde se quieren reubicar y como se diseña el plan de reubicación. En cuanto a la solicitud relativa a la formulación de proyectos productivos, el delegado aclara que no es Acción Social la que determina estos proyectos productivos, sino que vincula a familias que así los soliciten de manera formal y por escrito en programas vigentes articulados con otras instituciones de nivel nacional y departamental.

Colombia: Amenazas, intimidaciones e interferencias en el trabajo de la fiscal Ángela María Buitrago quien habría iniciado una investigación sobre los presuntos crímenes por parte de miembros de las fuerzas armadas.

Violación alegada: Amenazas de muerte y intimidaciones

Persona objeto del llamamiento: 1 mujer

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relatora Especial lamenta la falta de cooperación del Gobierno de Colombia con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Llamamiento urgente con fecha 27 de octubre de 2010, enviado junto con la Relatora Especial sobre la independencia de magistrados y abogados; y la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia la información que hemos recibido en relación con la situación de la fiscal Ángela María Buitrago.

Según la información recibida

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

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

El Fiscal General encargado habría justificado esta decisión aduciendo el escaso rendimiento de la Dra. Buitrago y su negligencia en el desempeño de unos casos asignados debido a la concentración de sus esfuerzos en el caso del Palacio de Justicia. En consecuencia, un procedimiento disciplinar habría sido iniciado contra la Dra. Buitrago. Según las informaciones recibidas, la Dra. Buitrago habría estado presente en la Corte 285 días en 2009 y en 2010 para seguir todos los casos bajo su competencia. Ahora sus casos habrían sido repartidos entre 5 personas.

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

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

Sin pretender pronunciarnos con antelación sobre los hechos mencionados, se expresa preocupación por las alegaciones de que los recientes acontecimientos de que ha sido víctima la Dra. Buitrago se habrían producido como consecuencia de su labor de investigación como fiscal en el caso del Palacio de Justicia así como en otros casos de violaciones de derechos humanos de alto perfil. Se expresa preocupación por la integridad física y psicológica de la Dra. Buitrago debido a las alegaciones de amenazas e intimidaciones sufridas. Asimismo, se expresa preocupación por el riesgo de que la destitución de la Dra. Buitrago deje alguno de los casos que ella instruía en la impunidad.

Con respecto a la destitución de la Dra. Buitrago, quisiéramos llamar la atención del Gobierno de Su Excelencia sobre las Directrices sobre el Rol de los Fiscales, adoptadas durante el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y

Tratamiento del Delincuente, celebrado en La Habana (Cuba) del 27 de agosto al 7 de septiembre de 1990. En particular, la directriz 4 prevé que Los Estados garantizarán que los fiscales puedan ejercer sus funciones profesionales sin intimidación, trabas, hostigamiento, injerencias indebidas o riesgo injustificado de incurrir en responsabilidad civil, penal o de otra índole; asimismo, la directriz 5 establece que las autoridades proporcionarán protección física a los fiscales y a sus familias en caso de que su seguridad personal se vea amenazada como consecuencia del desempeño de sus funciones.

Con respecto al procedimiento disciplinario que habría sido iniciado en contra de la Dra. Buitrago, nos gustaría señalar que las medidas disciplinarias que se adopten deben ser proporcionales a la gravedad de la infracción cometida y que los procedimientos ante el órgano disciplinario deben observar las debidas garantías procesales y el principio de imparcialidad. En los casos de destitución es aún más importante que esa decisión se someta a revisión judicial.

Asimismo, con respecto al hecho que la Dra. Buitrago estaba investigando y juzgando casos de ejecuciones extrajudiciales, incluso la ejecución del Magistrado Carlos Horacio Urán, como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

En este contexto, y en relación a las alegaciones recibidas según la cuales los recientes acontecimientos de que habría sido víctima la Dra. Buitrago se habrían producido como consecuencia de su labor de investigación en otros casos de violaciones de derechos humanos de alto perfil, nos gustaría llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 9, párrafo 3, apartado c), establece que toda persona tiene derecho, individual o colectivamente, entre otras cosas, a ofrecer y prestar asistencia letrada profesional u otro asesoramiento y asistencia pertinentes para defender los derechos humanos y las libertades fundamentales.

- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o

cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

Por lo tanto, quisiéramos instar al Gobierno de Su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y la seguridad de la Dra. Buitrago. Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para investigar los hechos referidos y proteger los derechos de las personas mencionadas.

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Cuál ha sido la razón de la desvinculación de la Dra. Buitrago y qué procedimiento se ha seguido al respecto?
3. ¿Qué medidas se han tomado para garantizar la seguridad de la Dra. Buitrago y de sus familiares?
4. ¿Qué medidas se han tomado para evitar que los retrasos en la investigación de los casos de la Dra. Buitrago provocados por su destitución resulten en que estos presuntos crímenes queden en la impunidad?
5. ¿Ha sido presentada alguna queja por parte de la Dra. Buitrago o en su nombre?

Colombia: Actos de intimidación y amenazas contra el ex juez penal militar capitán Alexander Cortés.

Violación alegada: Otra (Intimidación de un juez militar por investigar asesinatos extra judiciales)

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Colombia con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Llamamiento urgente con fecha 13 de septiembre de 2010, enviado con el Relator Especial sobre la independencia de magistrados y abogados y la Relator Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia la información que hemos recibido en relación con la situación del ex juez penal militar capitán Alexander Cortés.

Según la información recibida

El primero de marzo de 2007, después de un proceso de selección por concurso de méritos, el capitán Cortés asumió el cargo de juez 94 de instrucción penal militar adscrito a la Décima Séptima Brigada con sede en Carepa, departamento de Antioquia. Durante su labor

como juez militar, el señor Cortés habría encontrado una gran cantidad de casos de muertes presentadas en combate, respecto de las cuales habría existido abrumadora evidencia de que se trataba de ejecuciones extrajudiciales. Teniendo en cuenta que en el ordenamiento jurídico colombiano la investigación de este tipo de hechos, por tratarse de graves violaciones a los derechos humanos, está excluido de la competencia de la justicia penal militar y deben ser investigados por la justicia ordinaria, el juez Cortés habría remitido 54 casos de ejecuciones extrajudiciales a la Fiscalía General de la Nación.

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

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

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

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

Como consecuencia de la protección solicitada a las autoridades estatales, ante el fundado temor de represalias por las denuncias realizadas y por su actuación como funcionario judicial, el capitán Cortés habría recibido un esquema de protección. Dicho esquema, consistente en la asignación de un vehículo y de un patrullero, habría resultado insuficiente. En primer lugar, el vehículo no era blindado. En segundo lugar, el esquema no incluía un tripulante por lo que el escolta asignado debía hacer las veces de conductor, lo cual dificultaba la reacción ante la eventualidad de un atentado.

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

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

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

En este contexto, quisiéramos también llamar la atención del Gobierno de Su Excelencia sobre los Principios básicos relativos a la independencia de la judicatura, adoptados por el Séptimo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en Milán del 26 de agosto al 6 de septiembre de 1985, y confirmados por la Asamblea General en sus resoluciones 40/32 de 29 de noviembre de 1985 y 40/146 de 13 de diciembre de 1985, y en particular:

Con respecto a la desvinculación del Sr. Cortez nos gustaría subrayar lo establecido por el Principio 11 de estos Principios, según el cual, la ley garantizará la permanencia en el cargo de los jueces por los períodos establecidos, su independencia y su seguridad. A este respecto el Comité de Derechos Humanos ha considerado que la destitución de jueces sin que se les dé ninguna razón concreta y sin que dispongan de una protección judicial efectiva para impugnar la destitución, es incompatible con la independencia del poder judicial.

Con respecto a las amenazas e intimidaciones sufridas, deseamos llamar la atención del Gobierno de Su Excelencia al Principio 2 de los principios arriba mencionados, que prevé que los jueces resolverán los asuntos que conozcan con imparcialidad, basándose en los hechos y en consonancia con el derecho, sin restricción alguna y sin influencias, alicientes, presiones, amenazas o intromisiones indebidas, sean directas o indirectas, de cualesquiera sectores o por cualquier motivo. Nos gustaría también subrayar que, como previsto por el artículo 35 del Estatuto del Juez Iberoamericano, en garantía de la independencia e imparcialidad que han de presidir el ejercicio de la función judicial, le compete al Estado proporcionar los medios necesarios para la seguridad personal y familiar de los jueces en función de las circunstancias de riesgo a que se vean sometidos. El Comité de Derechos

Humanos, en su Comentario General n° 32, también ha observado que es necesario proteger a los jueces contra los conflictos de intereses y la intimidación (párrafo 19).

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

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

Por lo tanto, quisiéramos instar al Gobierno de Su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y la seguridad del Señor Cortés y de su familia. Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para investigar los hechos referidos y proteger los derechos del Señor Cortés.

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, sírvanse aclarar las medidas que se han tomado y se están tomando para garantizar la seguridad del Sr. Cortés y de su familia. ¿Disponen actualmente, el y su familia, de medidas de seguridad adecuadas y efectivas?
3. ¿Cuál ha sido la razón de la desvinculación del Sr. Cortés y qué procedimiento se ha seguido al respecto?
4. ¿Ha sido presentada alguna queja por parte de las supuestas víctimas o en su nombre?

Asesinato del Sr. Rogelio Martínez, defensor de derechos humanos

Violación alegada: ataques o asesinatos

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Colombia con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Llamamiento urgente con fecha 26 de mayo de 2011 enviado, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación con el asesinato del Sr. Rogelio Martínez, líder campesino y miembro del Movimiento Nacional de Víctimas de Crímenes de Estado (MOVICE), capitulo de Sucre.

Según las informaciones recibidas, el 18 de mayo de 2010, el Sr. Rogelio Martínez fue asesinado por varios hombres encapuchados cerca de la finca “La Alemania”, en el municipio de San Onofre, Sucre. El Sr. Martínez habría liderado en los últimos años el retorno de un número de familias a la finca “La Alemania” las cuales habrían sido desplazadas por paramilitares del Bloque de Héroes de los Montes de María.

Desde 2008, el Sr. Martínez habría recibido amenazas de muerte mediante correos electrónicos, así como llamadas y mensajes a su teléfono móvil. Estos hechos habrían sido comunicados a las autoridades competentes. En este contexto, el Sr. Martínez habría sido objeto de medidas de seguridad desde 2009 en el marco del Programa de Protección del Ministerio del Interior.

Se expresa grave preocupación por el asesinato del Sr. Martínez y por el hecho de que el mismo hubiera podido estar relacionado con sus actividades de promoción de los derechos humanos, en particular, a favor de los afectados por la usurpación de tierras por parte de grupos paramilitares.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención de su Gobierno sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos respectivamente garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que estos derechos sean protegidos por la ley y que nadie sea arbitrariamente privado de su vida. En particular, quisiéramos referirnos específicamente al Artículo 6(1) del Pacto Internacional sobre Derechos Civiles y Políticos (PIDCP) que estipula que el Estado garantizará la protección de toda persona que se encuentra bajo amenaza de muerte.

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

En este contexto, deseamos llamar la atención de su Gobierno sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho,

individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

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

Quisiéramos instar a su Gobierno a que adopte todas las medidas necesarias para investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

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

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.
3. Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/ perpetradores?

Asesinato del Sr. Alexander Quintero, defensor de derechos humanos

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: satisfactoria en termino generales

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia la respuesta proporcionada a la comunicación con fecha 31 de mayo de 2009. El Relator Especial muestra su grave preocupación por el asesinato del Sr. Quintero, sobre todo por el hecho de que su asesinato pudiera haber estado relacionado con su labor en la defensa de los derechos humanos. Teniendo en cuenta que unos días antes de su asesinato, el Sr. Quintero recibió amenazas de

muerte, el Relator Especial urge al Gobierno de Colombia que actúe inmediatamente sobre las alegaciones de amenazas de muerte para garantizar la integridad física y psicología de todos sus ciudadanos.

Llamamiento urgente con fecha 31 de mayo de 2010, enviado con la Relatora Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación con el asesinato del Sr. Alexander Quintero, defensor de derechos humanos y presidente de la Asociación de Juntas de Acción Comunal del Alto Naya.

Según las informaciones recibidas

El día 23 de mayo de 2010, el Sr. Quintero habría sido asesinado con arma de fuego por hombres desconocidos movilizados en motocicleta cuando se dirigía a su casa en el casco urbano de Santander de Quilichao, Cauca.

El Sr. Quintero trabajaba en defensa de los derechos de las víctimas de la masacre del Alto Naya, ocurrida en 2001. Era asimismo uno de los líderes principales que promovía la convivencia entre las comunidades afrodescendientes, indígenas y campesinas del Alto Naya. El Sr. Quintero habría recibido días antes de su asesinato amenazas de muerte por parte del grupo denominado “Águilas Negras”.

Este sería el segundo asesinato de un defensor de los derechos humanos en menos de una semana en Colombia después del asesinato el pasado día 18 de mayo en Sucre del Sr. Rogelio Martínez. Un llamamiento urgente ha sido enviado el pasado 26 de mayo por el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y la Relatora Especial sobre la situación de los defensores de los derechos humanos. En ambos casos, se trata de líderes que trabajaban por las víctimas y estaban involucrados en procesos de restitución de tierras en manos de grupos paramilitares. Asimismo, ambos defensores estaban amenazados y disponían de medidas de protección por parte de las autoridades colombianas.

Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia y riesgo para defensores de los derechos humanos en Colombia. Se expresa grave preocupación por el asesinato del Sr. Quintero y por el hecho de que el mismo hubiera podido estar relacionado con sus actividades de promoción de los derechos humanos, en particular, en favor de la restitución de tierras.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención de su Gobierno sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos respectivamente garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que estos derechos sean protegidos por la ley y que nadie sea arbitrariamente privado de su vida. En particular, quisiéramos referirnos específicamente al Artículo 6(1) del Pacto Internacional sobre Derechos Civiles y Políticos (PIDCP) que estipula que el Estado garantizará la protección de toda persona que se encuentra bajo amenaza de muerte.

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e

investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (Resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

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

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

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

Teniendo en cuenta la gravedad del caso, agradeceríamos recibir de su Gobierno una respuesta sobre las acciones emprendidas para proteger a los defensores de los derechos humanos y garantizar el libre ejercicio de sus actividades.

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Qué tipo de medidas está tomando su Gobierno para proteger el derecho a la vida de los defensores de derechos humanos, en particular los que defienden a las víctimas, especialmente si procuran la restitución de tierras? En este sentido, sírvase proporcionar información sobre las medidas de protección de las que disponía el Sr. Quintero, detallando la fecha en que se pusieron a su disposición así como el tipo de medidas que se facilitaron.
4. Por favor, sírvase proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.

5. Por favor, sírvase proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/ perpetradores?

Respuesta del Gobierno

Mediante carta fechada el 9 de noviembre del 2010, el Gobierno transmitió una respuesta al llamamiento urgente con fecha 31 de mayo de 2010.

El Estado se permite informar que la exactitud de los hechos denunciados será determinada mediante sentencia judicial, pues como se detalla más adelante, están siendo objeto de investigación y no corresponde pronunciarse antes de que las pesquisas adelantadas de manera independiente, por la rama judicial hayan concluido.

Sobre el particular, la obligación del Estado colombiano de proteger a todos los habitantes en el territorio, y de manera particular a las poblaciones vulnerables, se ha reflejado en el diseño y puesta en marcha de políticas, planes y programas que, en forma articulada y coordinada, orientan los esfuerzos institucionales hacia el logro de la plena vigencia de los Derechos Humanos. Durante los dos periodos del Gobierno del Presidente Álvaro Uribe Vélez, y en lo corrido del mandato del Presidente Juan Manuel Santos, el Gobierno ha avanzado en el fortalecimiento del Programa de Protección que lidera el Ministerio del Interior y de Justicia, a través de incrementos considerables en el presunto asignado.

No obstante, el Estado colombiano estima pertinente poner en conocimiento de los Honorables Relatores que al momento de su fallecimiento, el señor Alexander Quintero no contaba con medidas de protección implementadas por el Ministerio del Interior y de Justicia. Lo anterior, en razón a que el Estudio Técnico de Nivel de Riesgo realizado arrojó resultado "Ordinario".

De otro lado, el Estado colombiano se permite señalar que en el año 2003, el Ministerio de Defensa Nacional expidió la Directiva Ministerial N° 09, con el propósito de fortalecer la política de promoción y protección de los trabajadores, sindicalistas y defensores de derechos humanos.

Es así como en el marco de la mencionada Directiva Ministerial, la XIX Brigada del Ejército Nacional, desarrolla operaciones militares a nivel táctico, operacional y estratégico en el departamento del Cauca, las cuales han permitido lograr una serie de capturas, desmovilizaciones, decomiso de insumos para el procesamiento de alcaloides, e incautación de armamento, entre otros.

Adicionalmente, es pertinente mencionar que esa Unidad Operativa adelanta diferentes reuniones y actividades que cuentan con la participación de las autoridades locales, tendientes a fortalecer la interacción de las autoridades militares, policiales y civiles de la región, en defensa de los derechos fundamentales de los miembros de la comunidad.

El Estado colombiano se permite señalar que la Fiscalía Primera Seccional de Santander de Quilichao (departamento de Cauca ubicado al suroeste del país), adelanta la investigación penal por el delito de homicidio del señor Alexander Quintero, acaecido el pasado 23 de mayo de 2010 en el mencionado municipio.

El aludido proceso penal, en la actualidad se encuentra en etapa de indagación, en desarrollo de la cual se han llevado a cabo las siguientes gestiones tendientes a esclarecer los hechos, así como también a identificar e individualizar a los presuntos responsables: el 26 de mayo de 2010 se elaboró el correspondiente Programa Metodológico; los días 4 y 17 de junio de 2010, se llevaron a cabo entrevistas a testigo de los hechos.

De igual forma, el Estado colombiano se permite señalar que se llevó a cabo el protocolo de necropsia, con el propósito de determinar con exactitud, las causas de la muerte del señor

Quintero. Adicionalmente, es pertinente señalar que en la fecha, la Fiscalía de conocimiento se encuentra a la espera de practicar nuevas pruebas.

A pesar de las gestiones desplegadas hasta la fecha, el Estado colombiano se permite señalar que aún no han sido identificados los presuntos responsables de la muerte del señor Quintero.

El Estado se permite señalar que la Procuraduría General de la Nación informó que la Procuraduría 226 Judicial Penal I, lleva a cabo una Agencia Especial sobre la investigación penal con el propósito de velar por el lleno de todas las garantías sustanciales y procesales.

El Estado colombiano rechaza los hechos que resultaron en la muerte del señor Alexander Quintero.

La Fiscalía 1º Especializada de Seccional de Santander de Quilichao (departamento de Cauca), adelanta la investigación penal con el propósito de esclarecer los hechos y identificar e individualizar a los responsables del homicidio del señor Quintero.

En el marco de la citada investigación, que a la fecha se encuentra en etapa de Indagación, se ha ordenado la práctica de diversas pruebas, tales como el programa metodológico, diligencias de entrevistas y el protocolo de necropsia.

Con el propósito de garantizar la transparencia dentro del mencionado proceso penal, la Procuraduría 226 Judicial Penal I, constituyó una Agencia Especial sobre la mencionada investigación penal.

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.

Asesinato del Sr. Clodomiro Castilla Ospina, defensor de derechos humanos

Violación alegada: Impunidad

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: satisfactoria en termino generales

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia la respuesta proporcionada a la comunicación con fecha 20 de abril de 2010. El Relator Especial expresa su grave preocupación por el asesinato del Sr. Castilla Ospina y teme que su asesinato pudiera haber estado relacionado con su labor como periodista, en particular, en subrayar los supuestos enlaces entre agentes del gobierno y grupos paramilitares, así como casos de corrupción a nivel político. El Relator Especial toma nota de que el Gobierno de Colombia haya proporcionado información sobre medidas de protección en cuanto a los miembros de la familia del Sr. Castilla Ospina, e insta al Gobierno que sigue en ello para garantizar la integridad física y psicológica de la familia Castilla Ospina.

Carta de alegaciones con fecha 20 de abril de 2010, enviada junto con 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.

En este contexto, quisiéramos señalar a la atención del Gobierno de su Excelencia la información que hemos recibido 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 programa “Bloque Informativo” de “La Voz de Montería”, una emisora de radio ubicada en el departamento de Córdoba. Desde el año 2006, el Sr. Castilla Ospina había investigado y denunciado públicamente presuntos

vínculos entre agentes del gobierno local, políticos, terratenientes y grupos armados 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, había citado como testigo en una investigación de la Corte Suprema de Justicia sobre los vínculos ilegales anteriormente mencionados.

Según las informaciones recibidas, el 19 de marzo de 2010, el Sr. Castilla Ospina fue asesinado. Aproximadamente a las 20.40 horas, el Sr. Castilla Ospina se encontraba en la puerta de su casa, leyendo un libro, cuando un hombre no identificado se acercó y le disparó con un arma de fuego por lo menos ocho veces. El desconocido huyó en una motocicleta conducida por otro hombre no identificado. El Sr. Castilla Ospina falleció en el lugar de los hechos poco después. La policía inició una investigación sobre el asesinato pero hasta la fecha no se ha descubierto el motivo del asesinato y ningún sospechoso ha sido identificado.

Se informa que el Sr. Castilla Ospina habría sido objeto de amenazas continuas desde el año 2006, como resultado de su trabajo y de sus investigaciones. Recibió medidas de protección policial del Ministerio del Interior y Justicia durante tres años. Sin embargo, en 2009 renunció a las medidas de protección debido a su falta de confianza en el subcomandante de la policía departamental, encargada de su protección. Posteriormente, en noviembre de 2009, él solicitó que se reanudase la protección debido al empeoramiento de las amenazas en su contra. Su solicitud habría sido rechazada porque un informe de inteligencia indicaba que las amenazas no revestían la intensidad suficiente. El 3 de marzo de 2010, el Comandante de la Policía de Córdoba informó a Sr. Castilla Ospina que el Comando de Atención Inmediata (CAI) había rechazado su solicitud de medidas de protección.

El 20 de febrero de 2010, el Sr. Castilla Ospina denunció formalmente las amenazas en su contra ante la Fiscalía Quinta Seccional, en particular citando al Sr. William Enrique Salleg Taboada, Director del periódico “El Meridiano de Córdoba”. El Sr. Castilla Ospina publicó varios artículos en los que acusaba al Sr. Salleg Taboada, a la Sra. Martha Sáenz, Gobernadora del departamento de Córdoba, y al Sr. Pedro Guisay Chadid, empresario local, de estar vinculados a grupos armados ilegales. El Sr. Castilla Ospina habría expresado preocupación ya que las amenazas que había recibido podrían estar relacionadas con otras recibidas en su teléfono celular de personas no identificadas. Asimismo, recibió un mensaje de texto en el que se le advertía que si no retiraba las denuncias, sería asesinado. El Sr. Castilla Ospina consideró que dicho mensaje de texto podría haber sido enviado por el Sr. Guisay Chadid.

El Ministerio del Interior y Justicia ordenó un nuevo análisis de peligro en función de las nuevas amenazas recibidas por el Sr. Castilla Ospina, pero en el momento de su asesinato este informe no había todavía finalizado. El Sr. Castilla Ospina fue convocado a presentarse ante la Fiscalía Primera Especializada de Montería el 24 de marzo de 2010 en relación con su denuncia formal contra el Sr. Salleg Taboada.

Se teme que el asesinato del Sr. Castilla Ospina esté relacionado con las actividades que realizaba para promover y defender los derechos de los habitantes de la región de Córdoba. Su asesinato, además de las amenazas anteriores, se enmarcan en un contexto de gran vulnerabilidad para los periodistas y defensores de los derechos humanos en Colombia. Quisiera recordarle al Gobierno de su Excelencia su responsabilidad de garantizar la seguridad de los defensores de los derechos humanos y su obligación de adoptar las medidas necesarias para asegurar que ninguna violación contra un defensor de los derechos humanos quede en la impunidad.

Sin implicar, de antemano, una conclusión sobre estos hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos, respectivamente, garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que estos derechos sean protegido por la ley y que nadie sea arbitrariamente privado de su vida. En particular, quisiéramos referirnos al Artículo 6 (1) del Pacto Internacional sobre Derechos Civiles y Políticos (PIDCP) que estipula que el Estado garantizará la protección de toda persona que se encuentra bajo amenaza de muerte.

Como ha sido reiterado por el Consejo de Derechos Humanos en su resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte; y el principio 9 prevé que los Gobiernos procedan a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas.

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

Además, quisiéramos referirnos a los artículos siguientes:

el artículo 6, apartado a), establece que toda persona tiene derecho, individualmente y con otras, a conocer, recabar, obtener, recibir y poseer información sobre todos los derechos humanos y libertades fundamentales, con inclusión del acceso a la información sobre los medios por los que se da efecto a tales derechos y libertades en los sistemas legislativo, judicial y administrativos internos;

el artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados;

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

Además, nos permitimos hacer un llamamiento urgente al gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

En caso de que sus investigaciones apoyen o sugieran la veracidad de las alegaciones arriba mencionadas, quisiéramos instar a su Gobierno a que adopte medidas eficaces para evitar que se repitan tales hechos.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre estos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

Son exactos los hechos a los que se refieren las alegaciones presentadas?

¿Fue presentada alguna queja?

Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales llevadas a cabo en relación con el caso, incluyendo si han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables. Si no se han realizado diligencias judiciales y administrativas respecto al caso, le rogamos que explique por qué.

Por favor, proporcione información detallada sobre algunas medidas de protección adoptadas para asegurar la integridad física y psicológica de los miembros de la familia del Sr. Castilla Ospina y de sus colegas. Asimismo, le pedimos proporcione información detallada sobre las medidas de protección adoptadas para asegurar la integridad física y psicológica de los defensores de derechos humanos en la región.

Respuesta del Gobierno

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

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.

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 oficio.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

Democratic People's Republic of North Korea

Imposition of the death penalty for non-serious crimes

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: Group concern (37 males)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the Democratic Peoples Republic of North Korea. He however notes that the Government did not provide clarification of the allegations raised and failed to address certain issues including (a) details of all offenses for which capital punishment is imposed and (b) information on how the Government complies with international standards to ensure that the death penalty is imposed only for the most serious crimes.

Allegation letter dated 10 March 2011, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions

In this connection I would like to bring to the attention of your Excellency's Government information I have received concerning the imposition of the death penalty for financial crimes. I have also received information on executions carried out from 2007 to 2010.

According to information received

In November 2009, the Government initiated currency reforms which allegedly had a negative impact on the market. To mitigate negative outcomes, the Department of Peoples Security in December 2009 issued a proclamation on "Execution of Illegal Distributors of foreign currency". In January 2010, the State Security Department issued a directive on "Execution by Firing Squad for Leaking Confidential Details through Cell Phones". Several people were executed for offenses relating to the reforms. I have received information on the following executions.

- (a) In March 2010, Mr Pak Nam-ki, Director of Planning and Finance and Mr. Ri Tae-il, Deputy Director of Planning and Finance, were executed in relation to the failure of the currency reforms.
- (b) In March 2010, Ri Kee-woong aged 38, and Mr. Oh Chong-il, aged 24 were allegedly executed for forging and distributing new banknotes amounting to 376,000 Won.
- (c) In July 2010, two people from North Hamkyong Province were executed for impersonating the President and distributing leaflets containing complaints over the currency reform.
- (d) In December 2009, two people were executed in Chongjin, North Hamkyong Province and two people were executed in Hamheung, North Hamkyong Province for protesting against the currency reform.

I am informed that from 2007 to 2010, executions have been carried out for offences that will not be regarded as serious crimes under international law. I have received information on the following cases:

1. In January 2010, an Officer of the Yonsa Border Guard Unit in North Hamkyong Province Yonsa, from North Hamkyong Province, was executed on charges relating to aiding defection.
2. In January 2010, a worker at the Hamheung Munitions Factory in North Hamkyong Province from the same area was executed on charges relating to leaking internal information to a defector.
3. In February 2010, two men alleged to be Chinese citizens were executed on charges relating to leaking internal information.
4. In March 2010, Mr. Kim Seung-pil, a manager at the Yanggang Branch of the Central Bank, from Hyesan, Yanggang Province, was executed on charges relating to large-scale embezzlement and adultery with six women.
5. In April 2010, Platoon leader of the Hoeryong Border Guard Unit in North Hamkyong Province from Sinam District in Hoeryong, North Hamkyong Province was executed on charges relating to human trafficking, conniving at defection and leaking State and military secrets.
6. In April 2010, seventeen men were executed in Pyongyang on charges relating to organizing a crime ring and criticizing the President.
7. In May 2010, three Christians were executed in Guwol-dong, Pyongsong, South Pyongan Province, on charges relating to propagating Christianity.
8. In September 2009, Mr. So Nam-sin, was executed on charges of espionage and leakage of a secret during the Yongchon Station explosion of April 2004. He had previously worked as head of Transport Bureau of the Ministry of Transportation and as first vice-Minister of Railways.
9. In September 2009, Mr Kim Yong-sam was executed on charges of espionage and leaking secret during the Yongchon Station explosion of April 2004. He had previously worked as a delegate member of the Supreme People's Assembly, as Minister of Railways and as Director of Kaechon Railway Bureau.
10. In December 2009, a platoon leader of the Namyang, Border Guard Unit in North Hamkyong Province was executed on charges relating to narcotics trafficking, leaking secrets and human trafficking.
11. In August 2008, Mr. Cha In-kon, President of Jangsaeng Trading, was executed on charges relating to raising slush funds and illegally hiding foreign currency.
12. In July 2008, Mr. Jon Chol-su, aged 51, President of Dongyang Trading's Branch Office in Sinuiju, was arrested on charges of foreign currency embezzlement, smuggling metals and espionage. He was executed near Yomju County of North Pyongan Province.
13. In July 2007, Mr. Oh Mun-hyok , President of Nungra Trading's Branch Office in Yonsa County, North Hamkyong Province was executed at a public stadium in Yonsa County of North Hamkyong Province on charges relating to causing deforestation out of indiscriminate logging and smuggling logs including trees bearing the slogan of the President.

While I do not wish to prejudge the accuracy of the allegations reported to me, I would like to respectfully draw the attention of your Excellency's Government to several principles applicable to these cases under international law.

I am deeply concerned that the death penalty is being imposed for offenses relating to financial, political and other non-serious crimes. Under international Law the imposition of the death penalty has been restrictively interpreted. Article 6 (2) of the International

Covenant on Civil and Political Rights, acceded to on 14 Sep 1981, provides that “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant.”

The phrase “most serious crimes” was considered by the Human Rights Committee in its General Comment No. 6 and it was observed that “the Committee is of the opinion that the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure” and that “the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.” [Paras 3 and 7]. Further the United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, Principle 1 provides that “In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.” Approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

My mandate has submitted in a report to the Human Rights Council that “The conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting these provisions is that the death penalty can only be imposed in such a way that it complies with the stricture that it must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill which resulted in the loss of life. (A/HRC/4/20, para. 53).

In light of this review of basic human rights norms recognized by the international community on the application of capital punishment, I would respectfully request your Excellency’s Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law.

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

1. Are the facts alleged in the above summaries accurate?
2. Please provide information on how your Excellency’s Government complies with international standards to ensure that the death penalty is imposed only for the most serious crimes.
3. Please provide details of all offenses for which capital punishment is imposed.
4. Please provide a list of all executions that have been undertaken in the past five years and indicate the charges for which the death penalty was imposed.

Response from the Government dated 1 April 2011

I acknowledge receipt of your letter dated 10 March 2011 and addressed to me regarding the allegations of executions in the DPRK.

The allegations as referred to in your letter are all based on the fabrications and plots of those forces hostile to the DPRK.

For this reason I am categorically and resolutely rejecting these allegations.

Democratic People’s Republic of North Korea: Killing of three Chinese citizens at that China-DPRK border

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 17 June 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the killing of three **Chinese citizens at the China-Democratic People's Republic of Korea (DPRK) border near Dandong, in the Liaoning Province of China.**

According to the reports I have received, on 4 June 2010, a DPRK border guard shot three Chinese citizens dead at the China-DPRK. The three Chinese citizens, said to be residents of the border city of Dandong, were reportedly shot while they were on a boat on the Yalu River, which forms the border between China and DPRK. According to reports I have received, the three were within DPRK territory at the time of the killings. According to further information I have received, the motive for the killings is not at this stage clear. Possible motives put to me include that the Chinese citizens may have been killed either because they were believed to be intelligence agents, or because they were believed to be smuggling copper out of DPRK, or because they were believed to be unlawfully crossing an international border. It is unclear whether warnings were given before they were shot, or whether the Chinese citizens were themselves armed and whether their actions presented an imminent threat to the life of the DPRK guard or any other person.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Excellency's Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish the deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities." Intentional lethal force is only lawful where it is strictly unavoidable, and necessary to protect life (Article 6, ICCPR; Principle 9, the Basic Principles on the Use of Firearms by Law Enforcement Officials). The crossing of a national border – whether unlawful or not – of itself does not justify an intentional lethal shooting.

The prohibition on the arbitrary deprivation of the right to life applies to all persons, regardless of citizenship. Article 2 of the ICCPR requires that states "respect and [...] ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. This principle was reiterated by the Human Rights Council in Resolution 8/3 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

I urge your Excellency’s Government to conduct an effective investigation into the circumstances surrounding the deaths of the three Chinese citizens with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

Are the facts alleged in the above summary of the case accurate? If so, on what basis did the border guard fatally shoot the three Chinese citizens? Please explain whether the shooting was in compliance with the international law on the use of force.

Please provide the details, and where available the results, of any security force investigation, and judicial or other inquiries carried out in relation to the shooting of these three Chinese citizens at the border with the DPRK.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to the security officers found responsible.

Please indicate whether compensation has been or will be provided to the families of the victims.

I undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration. Finally, I would like to inform your Excellency’s Government that I will send a copy of this communication to the Government of the People’s Republic of China.

Democratic Republic of the Congo

Menaces de mort à l’encontre de MM. Jean Claude Katende et Georges Kapiamba

Violation alléguée: Menaces de morts et craintes d’exécutions extrajudiciaires par des agents de l’Etat, groupes paramilitaires, ou groupes coopérant avec ou tolérés par le gouvernement, ainsi que groupes non-identifiés susceptibles d’avoir un lien avec les catégories mentionnées ci-dessus et cas dans lesquels l’Etat n’a pas pris de mesures appropriées de protection

Objet de l’appel: 2 hommes identifiables

Caractère de la réponse: Réponse coopérative mais incomplète

Observations du Rapporteur spécial

Le Rapporteur spécial remercie le Gouvernement de sa réponse et note avec satisfaction que le Gouvernement a prié les autorités de diligenter des enquêtes appropriées pour la protection des deux responsables de l’ASADHO.

Appel urgent en date du 9 février 2011, envoyé conjointement avec 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.

A cet égard, nous souhaiterions attirer l'attention de votre Gouvernement 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).

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.

M. Kapiamba 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.

Selon les informations reçues

Le 1^{er} 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 1^{er} 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".

Dans la matinée du 2 février, Me Georges Kapiamba 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".

Ces menaces feraient suite à la conférence de presse tenue le 1er 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.

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.

De sérieuses craintes sont exprimées quant au fait que les menaces proférées à l'encontre de MM. Katende et Kapiamba soient liées à leurs activités légitimes de défense des droits de l'homme au sein de l'ASADHO. Des craintes sont également exprimées quant à leur intégrité physique et morale, ainsi que celle des autres membres de l'ASADHO. Ces menaces s'inscrivent dans un contexte de vulnérabilité continue des défenseurs des droits de l'homme en République démocratique du Congo, vulnérabilité qui se révèle être exacerbée dans le contexte des élections présidentielles qui se dérouleront cette année, comme ce fut le cas lors des précédentes élections. Enfin, de sérieuses craintes sont réitérées quant à la nature des propos du Ministre de la communication qui stigmatise à nouveau une organisation non-gouvernementale des droits de l'homme.

Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous souhaiterions rappeler à votre Gouvernement, les normes et principes fondamentaux pertinents énoncés à l'article 19 du Pacte International relatif aux droits civils et politiques, qui précise que « [t]out individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans

considérations de frontières, les informations et les idées par quelque moyen d'expression que ce soit ».

Nous souhaiterions également attirer l'attention de votre Gouvernement sur les principes fondamentaux énoncés dans la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 1 et 2 qui stipulent que « chacun a le droit, individuellement ou en association avec d'autres, de promouvoir la protection et la réalisation des droits de l'homme et des libertés fondamentales aux niveaux national et international » et que « chaque État a, au premier chef, la responsabilité et le devoir de protéger, promouvoir et rendre effectifs tous les droits de l'homme et toutes les libertés fondamentales, notamment en adoptant les mesures nécessaires pour instaurer les conditions sociales, économiques, politiques et autres ainsi que les garanties juridiques voulues pour que toutes les personnes relevant de sa juridiction puissent, individuellement ou en association avec d'autres, jouir en pratique de tous ces droits et de toutes ces libertés ».

De même, nous souhaiterions attirer l'attention de votre Gouvernement sur les dispositions suivantes en particulier :

- l'article 5, alinéas b) et c), qui stipule qu'afin de promouvoir et protéger les droits de l'homme et les libertés fondamentales, chacun a le droit, individuellement ou en association avec d'autres, aux niveaux national et international de former des organisations, associations ou groupes non gouvernementaux, de s'y affilier et d'y participer; de communiquer avec des organisations non gouvernementales ou intergouvernementales ;

- l'article 6, alinéas b) et c), qui stipule que chacun a le droit, individuellement ou en association avec d'autres, conformément aux instruments internationaux relatifs aux droits de l'homme et autres instruments internationaux applicables, de publier, communiquer à autrui ou diffuser librement des idées, informations et connaissances sur tous les droits de l'homme et toutes les libertés fondamentales; d'étudier, discuter, apprécier et évaluer le respect, tant en droit qu'en pratique, de tous les droits de l'homme et de toutes les libertés fondamentales et, par ces moyens et autres moyens appropriés, d'appeler l'attention du public sur la question ; et

- l'article 12, para. 2 et 3, qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

A la suite de sa récente visite en République démocratique du Congo, le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires a exprimé sa préoccupation au sujet des nombreux actes d'intimidation et de harcèlement dont font l'objet les défenseurs des droits de l'homme (A/HRC/14/24/Add.3, paragraphes 92 et 93). A cet égard, nous souhaiterions rappeler les dispositions pertinentes des Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions, adoptés par le Conseil Economique et Social dans sa résolution 1989/65 du 24 mai 1989. En particulier, le Principe 4 dispose qu'« une protection efficace sera assurée par des moyens judiciaires ou autres aux personnes et aux

groupes qui seront menacés d'une exécution extrajudiciaire, arbitraire ou sommaire, y compris à ceux qui feront l'objet de menaces de mort ».

Nous prions votre Gouvernement de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés de MM. Katende et Kapiamba, de diligenter des enquêtes sur les violations qui auraient été perpétrées et de traduire les responsables en justice. Nous prions aussi votre Gouvernement d'adopter, le cas échéant, toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

Au vu de l'urgence du cas, nous saurions gré à votre Gouvernement de nous fournir une réponse sur les démarches préliminaires entreprises afin de protéger les droits de MM. Katende et Kapiamba.

Nous notons la lettre en date du 7 février 2011 du Ministre de la justice et des droits humains de la République démocratique du Congo adressée au Procureur général lui demandant de « diligenter les enquêtes appropriées pour la protection de ces deux responsables de l'ASADHO et membres de l'Entité de liaison des Droits de l'Homme ».

Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par le Conseil des droits de l'homme, de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des droits de l'homme, nous serions reconnaissants à votre Gouvernement de ses observations sur les points suivants, tels qu'ils s'avèrent pertinents au regard du cas soulevé :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts?
2. Une plainte a-t-elle été déposée par les victimes ou en leurs noms ?
3. Veuillez fournir toute information complémentaire, et éventuellement tout résultat des enquêtes menées, investigations judiciaires et autres menées en relation avec les faits.
4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs de la violence.

Veuillez indiquer les mesures de protection qui ont été ou qui seront prises pour assurer l'intégrité physique et morale de MM. Katende et Kapiamba ainsi que celle des autres membres de l'ASADHO.

Veuillez fournir toute information sur les mesures prises afin d'empêcher et de mettre fin à toute forme d'intimidation et de menace à l'encontre des défenseurs des droits de l'homme.

Réponse du gouvernement en date du 7 février 2011

Par lettre en date du 7 février 2011, le Gouvernement indique avoir été informé par l'Observatoire pour la protection des défenseurs des droits de l'homme, programme conjoint de la Fédération Internationales des Droits de l'Homme (FIDH) et de l'Organisation Mondiale contre la Torture (OMCT), des menaces de mort qu'auraient subies les deux cités en concerne, respectivement Président national et Vice-Président national de l'Association Africain de Défense des Droits de l'Homme (ASADHO), de la part des personnes non identifiées.

Je joins, en annexe à la présente, le mail d'information reçu et vous demande de diligenter des enquêtes appropriées pour la protection de ces deux responsables de l'ASADHO et membres de l'Entité de liaison des Droits de l'Homme.

Democratic Republic of the Congo: Décès de M. Floribert Chebeya Bahizire et disparition forcée de M. Fidele Bazana Edadi

Violation alléguée: Morts en conséquence d'attaques ou assassinats par les forces de sécurité de l'Etat, ou groupes paramilitaires, brigades de la mort ou autres forces privées coopérant avec ou tolérés par l'Etat

Objet de l'appel: 2 hommes

Caractère de la réponse: Réponse coopérative mais incomplète

Observations du Rapporteur spécial

Le Rapporteur spécial remercie le Gouvernement de sa réponse et regrette que l'information selon laquelle l'autopsie n'a pas démontré avec certitude la cause du décès. Il souhaiterait recevoir de la part du Gouvernement des informations plus étayées au sujet de la cause précise du décès de M. Chebeya Bahizire. Le Rapporteur souhaiterait également être informé des investigations et procédures judiciaires en cours afin de traduire les responsables de la mort de M. Chebeya Bahizire en justice. En outre, le Rapporteur spécial saurait gré au Gouvernement d'apporter des clarifications au sujet de M. Fidèle Bazana.

Lettre d'allégation envoyée le 7 juin 2010, conjointement avec 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.

Dans ce contexte, nous souhaiterions attirer l'attention de votre Gouvernement sur des informations que nous avons reçues 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.

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.

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.

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.

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

Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous voudrions attirer l'attention au Gouvernement de votre Excellence aux principes fondamentaux applicables en vertu du droit international en l'espèce. En particulier, je voudrais référer à l'article 3 de la Déclaration universelle des droits de l'Homme et à l'article 6 du Pacte international relatif aux droits civils et politiques, qui stipulent que tout individu a le droit à la vie et à la sûreté de sa personne, que ce droit doit être protégé par la loi, et que nul ne peut être arbitrairement privé de la vie.

Le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires a souligné dans un rapport à la Commission des droits de l'homme que des "crimes, y

compris des meurtres, perpétrés par des particuliers peuvent aussi engager la responsabilité de l'État si celui-ci n'a pas pris les mesures voulues pour dissuader, empêcher et punir les auteurs" (E/CN.4/2005/7, para. 71.). Le Conseil des droits de l'homme a, dans sa résolution 8/3 sur le mandat du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, rappelé que "tous les états ont l'obligation de mener des enquêtes exhaustives et impartiales sur tous les cas présumés d'exécutions extrajudiciaires, sommaires ou arbitraires." Le Conseil ajouta que cette obligation comprend l'obligation "d'adopter toutes les mesures nécessaires, notamment d'ordre législatif et judiciaire, afin de mettre un terme à l'impunité et d'empêcher la réitération de telles pratiques, comme le prévoient les Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions." En particulier nous souhaiterions attirer l'attention du Gouvernement de votre excellence au principe 4 qui prévoit que les gouvernements doivent assurer une protection efficace par des moyens judiciaires ou autres aux personnes et aux groupes qui seront menacés d'une exécution extrajudiciaire, arbitraire ou sommaire.

Nous voudrions aussi attirer l'attention du Gouvernement de votre Excellence sur les principes fondamentaux énoncés dans la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 1 et 2 qui stipulent que « chacun a le droit, individuellement ou en association avec d'autres, de promouvoir la protection et la réalisation des droits de l'homme et des libertés fondamentales aux niveaux national et international » et que « chaque État a, au premier chef, la responsabilité et le devoir de protéger, promouvoir et rendre effectifs tous les droits de l'homme et toutes les libertés fondamentales, notamment en adoptant les mesures nécessaires pour instaurer les conditions sociales, économiques, politiques et autres ainsi que les garanties juridiques voulues pour que toutes les personnes relevant de sa juridiction puissent, individuellement ou en association avec d'autres, jouir en pratique de tous ces droits et de toutes ces libertés ».

De même, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur les dispositions suivantes, en particulier :

- l'article 6, a), conformément auquel chacun a le droit, individuellement ou en association avec d'autres de détenir, rechercher, obtenir, recevoir et conserver des informations sur tous les droits de l'homme et toutes les libertés fondamentales en ayant notamment accès à l'information quant à la manière dont il est donné effet à ces droits et libertés dans le système législatif, judiciaire ou administratif national;

- l'article 6, alinéas b) et c), qui stipule que chacun a le droit, individuellement ou en association avec d'autres, conformément aux instruments internationaux relatifs aux droits de l'homme et autres instruments internationaux applicables, de publier, communiquer à autrui ou diffuser librement des idées, informations et connaissances sur tous les droits de l'homme et toutes les libertés fondamentales; d'étudier, discuter, apprécier et évaluer le respect, tant en droit qu'en pratique, de tous les droits de l'homme et de toutes les libertés fondamentales et, par ces moyens et autres moyens appropriés, d'appeler l'attention du public sur la question ;

- l'article 12, para. 2 et 3, qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des

libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

Nous souhaiterions également rappeler au Gouvernement de votre Excellence les normes et principes fondamentaux pertinents énoncés à l'article 19 de la Déclaration universelle des droits de l'homme, et réitérés à l'article 19 du Pacte international relatif aux droits civils et politiques, qui précisent que: « Toute personne a droit à la liberté d'expression; ce droit comprend la liberté de rechercher, de recevoir et de répandre des informations et des idées de toute espèce, sans considération de frontières, sous une forme orale, écrite, imprimée ou artistique, ou par tout autre moyen de son choix ».

Dans le cas où vos enquêtes appuient ou suggèrent l'exactitude des allégations susmentionnées, nous prions le Gouvernement de votre Excellence de prendre toutes les mesures nécessaires pour diligenter des enquêtes sur les violations perpétrées et de traduire les responsables en justice. Nous prions aussi le Gouvernement de votre Excellence d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des droits de l'homme, nous serions reconnaissants au Gouvernement de votre Excellence de ses observations sur les points suivants :

Les faits tels que relatés dans le résumé du cas sont-ils exacts?

Veuillez fournir toute information complémentaire, et éventuellement tout résultat des enquêtes menées, investigations judiciaires et autres menées en relation avec les faits.

Réponses du Gouvernement de la République démocratique du Congo

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

Dans une lettre datée du 12 octobre 2010, le Gouvernement a accusé réception de la lettre d'allégation.

Ecuador

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”.

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 1 hombre

Carácter de la respuesta: satisfactoria en termino generales

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Ecuador la respuesta proporcionada a la comunicación con fecha 22 de julio de 2010. El Relator Especial expresa su grave preocupación por el asesinato del Sr. Ramírez Herrera y asimismo muestra su preocupación que su asesinato pudiera haber sido relacionado con su labor en la defensa de los derechos humanos. El Relator Especial toma nota de la investigación que llevaron a cabo las autoridades y las medidas de protección que realizaron para garantizar la integridad física y psicológica de la familia Ramírez Herrera.

Carta de Alegaciones con fecha 22 de julio de 2010, enviada junto con 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

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido 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.

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.

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.

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.

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.

Se teme 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 expresa 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 expresa 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.

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

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

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

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

Además, nos permitimos hacer un llamamiento urgente al Gobierno de su Excelencia para que adopte las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin

consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

Quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y las libertades de los familiares del Dr. Ramírez Herrera así como de los trabajadores de PRIVA y los miembros de su red nacional de expertos independientes e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

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

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Ha sido presentada alguna queja por parte de los familiares del Dr. Ramírez Hernández?
3. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.
4. Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/ perpetradores?

Respuesta del Gobierno

Mediante carta con fecha 2 de Noviembre de 2010, el Gobierno respondió a la carta de alegaciones con fecha 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.

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.

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.

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.

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

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

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

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.

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.-

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.

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

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.

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.

Egypt

Excessive use of force during demonstrations

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: Group concern (20 identifiable males)

Character of reply: No response

Observations of the Special Rapporteur

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

On 17 February 2011, the Special Rapporteur issued a press statement jointly with other Special Rapporteurs, in which he stated that human rights violations which occurred during the protests in Egypt should not be overshadowed by the transition process. The experts said that accountability efforts to ensure justice for violations committed should form part of the long term democratic reforms to fulfill the aspirations of the Egyptian people," the human rights experts stressed. "We urge the authorities to investigate the extent and incidents of violence including as a result of excessive use of force by security officials, officials who ordered use of live ammunition and acts of violence between the pro- and anti-government protesters. The Special Rapporteur added that "the circumstances leading to the killings must be fully investigated to determine the parties responsible including claims that the authorities were complicit in attacks against demonstrators or did not take effective steps to prevent the acts of violence."³

Urgent appeal dated 1 February 2011, sent with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right to food; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

In this connection, we would like to draw the attention of your Excellency's Government to information we have received 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.**

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.

³ Available at :

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10735&LangID=E>.

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.

While there are many other similar cases, it has been brought to our attention that the following demonstrators have been killed between 25 and 29 January 2011:

- Mutapha Ragab, aged 21
- Sulaiman Saber, aged 35
- Ghareeb Abdulall
- Fayez Fahim
- Mohamed Ahmed Yosph, aged 23
- Mahmoud Ahmed Mahmoud, aged 26
- Alae Abdelmehsen
- Mustapha Abdellah
- Mohamed Sha'ban Bashir, aged 30
- Mutafa Jamal Wardani
- Eraddi Mohamed 'eraddi
- Ahmed Ali Mohamed
- Achraf Nour Al DIIn Mohamed, aged 40
- Islam Metwali Mohamed
- Sharif Al Sayed Redwan
- Faraj Abdelfatah Awad
- Mohamed Mahrous Anwar
- Samir Abdellah, aged 55
- Ali Ahmed Ali
- Abdelmajeed Abdelalim Abdelmajeed, aged 41

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.

We have also been informed of hundreds of arrests being made of peaceful demonstrators 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.

We have also received information 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.

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.

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.

In this context, concern has been raised that human rights organizations are not able to gather information on human rights violations that have been reported in relation to these demonstrations. Concern has also been expressed at the potential escalation of violence as well as at the subsequent increase in the number of victims and arrests.

While we do not wish to prejudice the accuracy of these allegations, we wish to appeal to your Excellency's Government to ensure that the rights and freedoms of the Egyptian people are guaranteed in compliance with the international obligations entered into by Egypt.

Firstly, we wish to stress that everyone has the fundamental right to life and security of the person as set forth in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which Egypt ratified on 14 January 1982, and in article 3 of the Universal Declaration of Human Rights (UDHR). This right shall be protected by law. No one shall be arbitrarily deprived of his life.

With regard to the allegations of excessive use of force by security officers and of the use of live ammunitions on protestors, we wish to draw your Excellency's attention to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In particular, principle 4 requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force. Principle 5 further states that "law enforcement officials shall "(a) Exercise restraint in such use and act in proportion to the

seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life” and “(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment” whenever the lawful use of force and firearms is unavoidable. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life according to principle 9.

In respect of the alleged deaths as a result of the excessive use of force, we wish to refer your Excellency’s Government to the “obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ...to grant adequate compensation within reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions” (Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, para. 4).

Furthermore, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment acceded to by Egypt on 25 June 1986.

In this context and with respect to the allegations according to which the fate and whereabouts of some demonstrators remain unknown, we would like to draw the attention of your Excellency’s Government to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that “[...] detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person.”

Without expressing an opinion on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency’s Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR.

With respect to the allegations of possible enforced disappearances, we would like to bring to your Excellency’s Government’s attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which sets out necessary protection by the State, including in:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance);
- article 9 (right to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty);
- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information

on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest); and

- article 12 (right to the maintenance in every place of detention of official up-to-date registers of all detained persons).

With regard to disruptions in communication networks and transmission of news, we are concerned that they may constitute an attempt to disrupt communication between the protestors as well as transmission of news. In this regard, we would like to remind your Excellency's Government of its obligation 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 ICCPR, 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." In addition, we would like to recall the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions on: (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; and (iii) access to or use of information and communication technologies, including radio, television and the Internet (para. 5(p)).

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (*ordre public*), the protection of public health or morals of the protection of the rights and freedoms of others.

Concerning the role of media and human rights defenders in monitoring demonstrations, we would like to refer to the Guidelines on Freedom of Peaceful Assembly of the Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe (OSCE), available at www.osce.org/odihr/item_11_23835.html, and to the 2007 report to the General Assembly (of the Special Representative of the Secretary-General on the situation of human rights defenders) (A/62/225, paras. 91 and 93) that underline how "monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them."

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

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

- article 5, point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully; and
- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

We also wish to underline the importance of an open public dialogue on concerns related to the realization of an adequate standard of living, including the right to food, and of allowing individuals to publicly express their grievances. In this regard, we recall the need to formulate and implement policies to safeguard the right to food in compliance with the principles of accountability, transparency, people's participation, as also underlined by the Committee on Economic, Social and Cultural Rights in its General Comment No. 12 on the right to adequate food (E/C.12/1999/5).

We therefore urge your Excellency's Government to immediately take all necessary measures to safeguard the fundamental rights and freedoms of its citizens and to refrain from using disproportionate use of force against demonstrators.

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

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

1. Are the facts alleged in the above summary of the cases accurate?
2. Please indicate which branches of the security forces have been involved and what instructions they have received, in particular with regard to the use of force. Have any penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases.
4. Please indicate what measures have been taken to restore full access to telecommunications.
5. Please indicate whether compensation will be provided to the victims, including their families.
6. Please provide information on measures taken to ensure an open public debate on the root causes of the upheaval, including those affecting the right to food, and to ensure adequate participation of beneficiaries in the design and implementation of relevant policies and programmes.

Killing of Migrants by human traffickers

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: Group concern (20 identifiable males)

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal of 8 December 2010, sent with the Special Rapporteur on trafficking in persons, especially women and children.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the fate of **approximately 260 migrants from Eritrea, Sudan and Ethiopia who are held hostage by "traffickers" in Sinai. 6 Eritrean hostages have been already murdered by the traffickers.**

According to the information received

Approximately 260 migrants from Eritrea, Sudan and Ethiopia have been held hostage for over a month in Sinai near the Israeli border. The information received suggests that the place of hostage is likely to be the city of Rafah near the Israeli border, and the migrants are reportedly held in purpose-built containers. The hostages are allegedly held in extremely degrading and inhumane conditions. It is reported that they are bound by chains around their ankles, deprived of adequate food and given salty water to drink, and subjected to beating and ill-treatment by extreme methods, including the use of electric shocks.

It is reported that the traffickers are demanding a payment of US\$8,000 per person as a condition of release and ongoing journey to Israel. On 28 November 2010, three Eritrean hostages have been reportedly killed by gunshot, after their family members confirmed that they were unable to make the payment to the traffickers. On 29 November 2010, another three Eritrean hostages have reportedly died after being beaten with sticks and tortured by the traffickers for attempting to escape. It is also alleged that nine hostages are seriously injured, ten suffer from serious diseases and there are several pregnant women among the hostages. It is alleged that while this case was reported to the police, they have not commenced any investigation or taken any action.

These allegations are reported in light of information suggesting that Sinai has become a major centre for people trafficking by highly organized crime syndicates. Reports indicate that migrants are often trafficked through Sinai desert to Israel, particularly for the purpose of commercial sexual exploitation. Migrants are also allegedly exploited in the hands of traffickers during their journey and subjected to violence and abuse, including rape, sexual assault, use of electric shocks, branding with hot metals and beatings. Concerns have been further raised that the migrants currently held hostage may include trafficked persons. In addition, it is concerned that despite the information indicating the existence of organized traffickers in Sinai, the law enforcement authorities allegedly fail to take any action to address this issue.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) (ratified by your Excellency's Government on 14 January 1982) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). The prohibition on the arbitrary deprivation of the right to life applies to all persons, regardless of citizenship. Article 2 of the ICCPR requires that states "respect and ... ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant,

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The State has the due diligence obligation to prevent violations of the right to life. This includes the due diligence obligation to prevent killings of persons by non-state actors.

In its General Comment No. 31, the Human Rights Committee has observed "...the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States Parties must ensure that those responsible are brought to justice. ...As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as ..., summary and arbitrary killings (article 6)".

The Special Rapporteur on extrajudicial, summary or arbitrary executions has also noted in a report to the Commission on Human Rights, that "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71). In this connection, we would also like to bring to your Government's attention the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Prevention and Investigation Principles") which set out the duty of your Excellency's Government to investigate, prosecute, and punish all violations of the right to life. Pursuant to principle 9, the investigation of such cases "shall be thorough, prompt and impartial. ... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death." Principle 17 of the Prevention and Investigation Principles further provides that "[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.

Furthermore, we would like to recall obligations of your Excellency's Government under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime ("the Palermo Protocol"). As a State Party to the Palermo Protocol, your Excellency's Government is under an obligation to prevent trafficking in persons, investigate, prosecute and punish traffickers, and to protect victims of trafficking in persons. Article 10 of the Palermo Protocol *inter alia* requires State Parties to investigate and exchange information on the means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them. The onus therefore resides on State Parties to determine whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons. Further, under article 11, State parties undertake without prejudice to international commitments in relation to the free movement of people, to strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons. Consequently, we urge your government to carry

out urgent investigation and to identify and assist victims of trafficking in conformity with State Parties obligations under the Palermo Protocol.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to immediately investigate these allegations and to take all necessary measures to guarantee that the rights and freedoms of the migrants concerned are respected. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments. We also appeal to your Excellency's Government to ensure that an investigation into the murder of the six Eritrean migrants is initiated and accountability of any person guilty of the alleged violations is ensured.

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

1. Are the facts alleged in the above summary accurate?
2. Please provide details, and where available the results, of any investigation carried out in relation to the migrants who are currently held hostages in Sinai as well as steps taken to ensure the safety of the hostages.
3. Please provide details, and where available the results, of any investigation carried out in relation to the alleged murder of the six Eritrean migrants.
4. Please provide details of any measures undertaken by your Excellency's Government to combat and prevent crimes committed by traffickers in Sinai.

Death in custody Mr. Khaled Said and Mr. Abdelsami

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the Government of Egypt in relation to the deaths of Mr. Khaled Said and Mr. Abdelsami. He welcomes the investigations that were taken to establish the cause of death of the two victims.

Allegation letter dated 2 September 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning concerning the deaths of **Mr. Khaled Mohammed Said and Mr. Abdelsami' Saber Abdelsami**.

According to information received

On 6 June 2010, Mr. Said, aged 28, was dragged out of an internet café in Alexandria by two plain-clothes police officers and severely beaten. According to the account of several witnesses, as a result of the violent beatings received, Mr. Said lost consciousness and fell to the ground where the two police officers brutally kicked him on the head and face until he died. The two police officers reportedly took the body of Mr. Said into their vehicle and left the scene only to come back a few minutes later to throw his body on the pavement.

The relatives of Mr. Said were informed of his death but they were prevented from seeing his body immediately. They were reportedly taken to Sidi Gaber police station by the police officers and told that Mr. Said had swallowed a bag of narcotics when the police approached him and died from the overdose.

On 7 June 2010 the family filed a complaint with a public prosecutor but was informed that the police had filed a report claiming that Mr. Said had died from a drug overdose.

A few days after the death of Mr. Said, shocking pictures of the victim's dead body were distributed through the internet. On 12 June 2010, the Ministry of Interior issued a statement indicating that Mr. Said died as a result of asphyxiation from swallowing a bag of narcotics. Further the statement condemned the posting of these pictures as an attempt to tarnish the image of the Egyptian security forces.

On 14 June 2010, the Prosecutor ordered a new medical examination to be carried out under the supervision of three forensic doctors to establish the causes of death. We are informed that the two police officers who are believed to have killed Mr. Said, continue to discharge their functions.

On 6 June 2010, Mr. Abdelsami' Saber Abdelsami, aged 60, was arrested on Ali Ameen Street in Nasr city, by members of the Nasr Police Department who were dressed in civilian clothing. He was transferred to Nasr Police Department and charged with insulting a police officer. It is alleged that Mr. Abdelsami died a few days later as a result of severe beatings while he was in custody.

On 7 June 2010, the public prosecutor called for the immediate release of Mr. Abdelsami. However, State Security Intelligence (SSI) of Nasr Police Department did not comply with the order.

It has been reported that Mr. Abdelsami was beaten at length during his detention, which is what would have led to his death. On 9 June 2010, his family was able to visit him in prison and they noticed that Mr. Abdelsami was in a bad shape and looked as he had been hit. He reportedly told them that he was being beaten and tortured but could not provide further information at this stage.

According to the information received, on 11 June 2010, Mr. Abdelsami was transferred to hospital and died although the family was only informed of his death on 15 June when he was pronounced dead. On this day, the family reportedly saw the body and noticed that it was covered in injuries and bruises. The family allegedly filed a complaint and requested an autopsy, which was ordered by the Prosecutor General. However, to date, the family has not received any information on their complaint or on the autopsy.

We would like to take this opportunity to bring to the attention of your Excellency's Government, a communication dated 17 November 2009, in which we raised the concern of the case of Mr. Yusuf Hamdane Awad (Abu Zahri), who allegedly died in custody. We regret that we are yet to receive a response from your Excellency's Government.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the fundamental principles under international law applicable to this case. Article 6 of the International Covenant for Civil and Political Rights (ICCPR), to which Egypt is a party, states that no one shall be arbitrarily deprived of his or her life. Article 7 of the same Covenant provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

We would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at

any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraphe 9.2):

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

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of Mr. Khaled Mohammed Said and Mr. Abdelsami’ Saber Abdelsami. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency’s Government to carry out inquiries into the circumstances surrounding the deaths of Mr. Khaled Mohammed Said and Mr. Abdelsami’ Saber Abdelsami, expeditiously, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate their families. We are concerned with the number of deaths’ in police custody and we urge your Excellency’s Government to take measures to prevent further recurrence.

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

1. Are the facts alleged in the case summary accurate? If not, please provide all relevant information and documents demonstrating their inaccuracy.
2. Please indicate the legal basis for the arrest and detention of Mr. Khaled Mohammed Said and Mr. Abdelsami' Saber Abdelsami.
3. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to these cases. Please provide the details of any compensation payments made to the families or dependants, if any, of Mr. Khaled Mohammed Said and Mr. Abdelsami' Saber Abdelsami.
4. Please provide the details of any criminal prosecutions and/or disciplinary measures in relation to persons found to be responsible, either as perpetrators or as responsible superiors, for the death in custody of Mr. Khaled Mohammed Said and Mr. Abdelsami' Saber Abdelsami.
5. Please explain the steps taken to prevent further recurrence of deaths in custody.

Government response dated 1 November 2010

Death of Mr. Khaled Said

1. The Office of the Public Prosecutor opened an investigation into the death of Mr. Said which resulted in it bringing two policemen who had been implicated in the case brought before a criminal court (referral order No. 15483 of 2010, Sidi Gaber Criminal Court file No. 9 of 2010).
2. Based on the outcome of its investigations, the Office of the Public Prosecutor charged Mr. Mohamed Saleh Mahmoud Ghazala and Mr. Awad Ismail Suleiman Abd Al-Majid, both police officers, with serious and major offences punishable under articles 129, 242 (a) and (c), 280 and 282 (b) of the Criminal Code, namely, wrongfully and unlawfully arresting the victim and physically torturing him, thereby abusing their office.
3. The Office of the Public Prosecutor established that, prior to the events in question, the victim had been found guilty of assault and sentenced in absentia to a prison term. On 7 June 2010, the two accused had attempted to arrest him while he was walking along a public street. The victim had attempted to escape by entering an Internet café. The accused pursued the victim into the Internet café, where they unlawfully arrested and restrained him. Unable to identify a package wrapped in plastic that Mr. Said was holding, the accused then attempted to prise it out of his hand. Mr. Said prevented them from doing so by swallowing the package. The accused then beat Mr. Said and smashed his head against a marble wall in the Internet café. They then escorted him to the foyer of a neighbouring apartment building, where they subjected him to further beatings all over his body. Mr. Said suffered multiple injuries as a result of this assault.
4. In the course of the investigations, the Office of the Public Prosecutor ordered a designated forensic medical examiner to carry out an autopsy on the victim. It then ordered a second autopsy to be carried out by a team of three doctors from the department of forensic medicine, headed by the chief medical examiner. The team concluded, in the autopsy report, that the victim had died as a result of asphyxiation when plastic wrap had lodged in his pharynx and obstructed his airways. They also determined that the injuries sustained by the victim, the signs of which were visible on his body, were not the cause of death. According to the chief forensic medical examiner involved in the investigations conducted by the Office of the Public Prosecutor, the autopsy results showed that the victim had swallowed the plastic wrap of his own volition and not because he had been forced to do so. The plastic wrap had lodged in his airway while he was alive and not after death. Moreover, the forensic medical examiner confirmed that the photograph that had appeared

in sections of the media, showing stitches in the face and neck of the deceased had been taken after the initial autopsy, and that the stitches were the result of autopsy procedures. The Office of the Public Prosecutor concluded that Mr. Said was not a victim of premeditated murder and had not died as a result of being beaten.

5. In the light of the above, the Office of the Public Prosecutor has, moreover, again drawn attention to existing rules detailing, inter alia, the procedures to be followed when enforcing judgements handed down in absentia. The Office of the Public Prosecutor has also reminded the police that they must operate in accordance with those rules.

6. The Office of the Public Prosecutor charged the two police officers and brought them before the criminal division of the Alexandria Court of Appeal. The two officers remain in detention and the case is still before the courts.

Death of Mr. Abdelsami' Saber Abdelsami

I. Urgent appeal for information on the circumstances surrounding the death of Mr. Abdelsami' Saber Abdelsami and the measures taken in that regard

1. Mr. Abdelsami' Saber Abdelsami, a street food vendor born in 1953, was arrested for insulting two Nasr City officials and threatening them with a knife when they carried out an order to remove his food stall, on the grounds that it did not meet the relevant health and administrative regulations.

2. Crime report No. 27317/2010 was filed at Nasr City Police Precinct I. Mr. Abdelsami' Saber Abdelsami was referred to the Office of the Public Prosecutor, where he was questioned. An order was then issued for his release on condition that he provided details of his place of residence.

3. While preparations were being made for his release, Mr. Abdelsami' Saber Abdelsami fainted. He was taken to hospital, where he died.

4. Before a burial permit was issued, the Office of the Public Prosecutor ordered the forensic medicine department to carry out an autopsy to establish the cause of death. According to the autopsy report, his death had been caused by acute circulatory and respiratory failure.

5. The Office of the Public Prosecutor has not yet concluded its investigations in the case.

II. Urgent appeal for information on measures taken with a view to combating human rights abuses by staff members working for the Ministry of the Interior

In accordance with the law, the Constitution and other relevant instruments, the Ministry of the Interior endeavours to ensure that human rights standards are met in all detention centres and in district and local police stations. To that end, and within the framework of its overall policy the Ministry of the Interior carries out the following tasks:

- Investigating all abuses by Ministry of the Interior personnel and taking appropriate legal and punitive action when there is evidence that personnel have infringed the law or regulations in force regarding the treatment of detainees. In accordance with the relevant regulations, public prosecutor's offices and members of the judiciary also undertake inspections of detention centres.
- Investigating complaints about unlawful arrests or mistreatment that departments of the Ministry of the Interior receive from members of the public and taking the necessary action when there is evidence to substantiate those complaints.

Egypt: Killing of Migrants on the Egypt-Israeli Border

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: 3 unidentified persons

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 9 April 2010, sent with Special Rapporteur on the human rights of migrants.

In this connection, we would like to draw the attention of your Excellency's Government to information I have received regarding the **killings of three migrants on the Egyptian border with Israel**.

According to the allegations we have received, the three migrants were shot dead by Egyptian border guards at the Sinai border. On 27 March 2010, two African migrants were reportedly shot as they attempted to cross the border. On 29 March 2010, a 26 year old Eritrean man was reportedly also shot as he attempted to cross the border. Two other migrants were injured in the same incident.

These killings are of particular concern as they appear to be part of a broader pattern of extrajudicial executions by Sinai border guards of African migrants, with 12 such killings reported to have already occurred this year. According to reports received, 69 migrants have been killed by border guards since 2007. Information received alleges that the Egyptian Government has failed to conduct investigations into any of these killings. The killings appear to be part of an attempt to stem the flow of illegal migrants across the border.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer Your Excellency's Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish the deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities." Intentional lethal force is only lawful where it is strictly unavoidable, and necessary to protect life (Article 6, ICCPR; Principle 9, the Basic Principles on the Use of Firearms by Law Enforcement Officials). The crossing of a national border – whether unlawful or not – of itself does not justify an intentional lethal shooting.

The prohibition on the arbitrary deprivation of the right to life applies to all persons, regardless of citizenship. Article 2 of the ICCPR requires that states "respect and ... ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary

executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. This principle was reiterated by the Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

We urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of the three migrants with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

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

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the shooting of migrants at the Sinai border.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to police officers found responsible.

Please indicate whether compensation has been provided to the families of the victims.

Please indicate what broader steps, if any, are being taken to address unlawful use of force by police.

Guinea Ecuatorial

Ejecución de los ciudadanos ecuatoguineanos José Abeso Nsue, Manuel Ndong Aseme y Alipio Ndong Asumu, ex oficiales de las Fuerzas Armadas, y Jacinto Micha Obiang, ex funcionario de Aduanas.

Violación alegada: Pena de muerte

Persona objeto del llamamiento: 4 hombres

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relatora Especial lamenta la falta de cooperación del Gobierno de Guinea Ecuatorial con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos

Carta de Alegaciones con fecha 1 de octubre de 2010, enviada junto con Relatora Especial sobre la independencia de magistrados y abogados.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia información que hemos recibido en relación con respecto a la ejecución, a las 15:30 horas del sábado 21 de agosto, de los ciudadanos ecuatoguineanos José Abeso Nsue, Manuel Ndong Aseme y Alipio Ndong Asumu, ex oficiales de las Fuerzas Armadas, y Jacinto Micha Obiang, ex funcionario de Aduanas.

Según la información recibida

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

Las ejecuciones habrían sido ordenadas por un tribunal militar en violación de la Ley Fundamental de Guinea Ecuatorial y de otras normas vigentes en materia penal. De hecho, según el artículo 11 de la reformada Ley Orgánica del Poder Judicial, la competencia de la jurisdicción militar estaría limitada al ámbito estrictamente castrense respecto de los hechos tipificados como delitos o faltas por el Código de Justicia Militar. También establecería que cuando en la comisión de los hechos aparecieran implicados personal castrense y civil, el conocimiento de la correspondiente causa competirá a la jurisdicción ordinaria. Sin embargo, a pesar del hecho que tres de los cuatro ciudadanos ejecutados habían sido apartados de las Fuerzas Armadas hacía más de 20 años - y que tanto el cuarto de ellos como los dos militantes de Unión Popular arriba mencionados, eran civiles - la causa no ha sido determinada por un tribunal ordinario como hubiera correspondido.

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

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

Deseamos asimismo llamar la atención del Gobierno de Su Excelencia sobre el hecho esencial, sobre todo en casos en que puede resultar aplicada la pena capital, respetar de manera escrupulosa los derechos de toda persona, en condiciones de plena igualdad, a ser oída públicamente y con justicia por un tribunal independiente e imparcial. Sólo el respeto total de las garantías del debido proceso permite que se pueda distinguir entre la aplicación de la pena capital y una ejecución sumaria. De hecho, la imposición de la pena capital como resultado de un proceso que no respeta los principios y estándares de un proceso justo representa una privación arbitraria de la vida.

Con respecto al uso de tribunales militares, nos gustaría llamar la atención del Gobierno de Su Excelencia sobre las recomendaciones hechas por la Comisión de Derechos Humanos que en su Resolución 2004/32 exhortó a los Estados: “que hayan creado tribunales militares o tribunales penales especiales para juzgar a los delincuentes a que velen por que esos tribunales, cuando así lo requiera el derecho internacional aplicable, formen parte integrante del sistema judicial general y apliquen el debido procedimiento legal internacionalmente reconocido en garantía de un juicio imparcial, en particular del derecho a recurrir contra la sentencia condenatoria y la pena impuesta”. El Comité de Derechos Humanos también ha intervenido sobre esta cuestión, observando en su Comentario General nº 32 que: “el enjuiciamiento de civiles por tribunales militares o especiales puede plantear problemas graves en cuanto a que la administración de justicia sea equitativa, imparcial e independiente. Por consiguiente, es importante que se tomen todas las medidas posibles

para velar por que tales juicios se desarrollen en condiciones en que puedan observarse plenamente las garantías estipuladas en el artículo 14”.

En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar al Gobierno de Su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos.

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, sírvanse aclarar el motivo por el cual ha sido el tribunal militar llamado a conocer de la causa arriba mencionada.
3. ¿Por qué no se ha dado a las personas arribas mencionadas la posibilidad de recurrir a la Corte Suprema de Justicia como previsto por el artículo 37, c) de la misma Ley Orgánica del Poder Judicial?
4. ¿Ha sido presentada alguna queja por parte de las supuestas víctimas o en su nombre?

Gabon

Menaces de mort à l'encontre de MM. L. L. L. et R. B.

Violation alléguée: Menaces de morts et craintes d'exécutions extrajudiciaires par des agents de l'Etat, groupes paramilitaires, ou groupes coopérant avec ou tolérés par le gouvernement, ainsi que groupes non-identifiés susceptibles d'avoir un lien avec les catégories mentionnées ci-dessus et cas dans lesquels l'Etat n'a pas pris de mesures appropriées de protection

Objet de l'appel: 2 hommes

Caractère de la réponse: Pas de réponse

Observations du Rapporteur Spécial

Le Rapporteur spécial regrette que le Gouvernement du Gabon n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.

Appel urgent envoyé le 15 février 2011 conjointement avec le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants.

A cet égard, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur la situation de **MM. L. L. L. et R. B.**, de nationalité congolaise, originaires de la province de l'Equateur (République démocratique du Congo) et à présent demandeurs d'asile au Gabon.

Selon les informations reçues

De janvier à août 2009, MM. L. L. L. et R. B. auraient été détenus au secret en République démocratique du Congo et auraient été, à plusieurs reprises, victimes d'actes de tortures et de mauvais traitements lors de leur détention. Il est également allégué qu'ils auraient été

maintenus pendant plusieurs jours pieds et mains enchaînés, en position debout, sans manger, et n'auraient pas reçu de soins médicaux. Il leur aurait été entre autres reproché de conspirer « pour déstabiliser les institutions de la République au profit du leader du MLC [Mouvement pour la Libération du Congo], Monsieur Bemba ».

Sous la menace de poursuites et d'exécution, ces deux personnes auraient fui vers le Gabon en janvier 2010, où elles auraient effectué une demande d'asile. Leurs dossiers auraient été transmis à la Commission Nationale pour les Réfugiés en avril 2010. L'enregistrement de leurs demandes se serait effectué en décembre 2010. Elles seraient enregistrées au Haut Commissariat des Nations Unies pour les réfugiés de Libreville respectivement sous les numéros [.....] et [.....].

Il est également rapporté que des avis de recherche auraient été diffusés par la Direction générale des Renseignements généraux, les Services Spéciaux et la Garde républicaine de la République démocratique du Congo à l'encontre de MM. L. L. L. et R. B. et auraient été transmis aux autorités du Gabon. Il leur serait reproché d'« inciter les militaires et policiers originaires de l'Equateur à commettre les actes contraires à leurs missions et à se soulever contre le régime en place ».

De sérieuses craintes sont exprimées au sujet de l'intégrité physique et mentale de MM. L. L. et B. notamment s'agissant des allégations de l'existence d'un risque crédible de torture ou de mauvais traitement en cas de renvoi dans leur pays d'origine.

Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous souhaiterions néanmoins intervenir auprès du Gouvernement de votre Excellence afin que soit protégé et respecté le droit à la vie et à la sécurité des personnes susmentionnées, tel qu'énoncé à l'article 3 de la Déclaration Universelle des Droits de l'Homme ainsi qu'aux articles 6(1) et 9(1) du Pacte International relatif aux Droits Civils et Politiques (PIDCP), auquel le Gabon a accédé le 21 janvier 1983. Il est entendu que le droit de tout individu à la vie doit être protégé par la loi que « Nul ne peut être arbitrairement privé de la vie ».

Nous souhaiterions de plus attirer l'attention du Gouvernement de votre Excellence qu'en vertu de l'article 3(1) de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, ratifiée par le Gabon le 8 septembre 2000, « aucun Etat partie n'expulsera, ne refoulera, ni n'extradera une personne vers un autre Etat où il y a des motifs sérieux de croire qu'elle risque d'être soumise à la torture. » Le Comité des droits de l'homme a indiqué dans son Observation générale No. 20 sur l'article 7 que « les Etats parties ne doivent pas exposer des individus à un risque de torture ou de peines ou traitements cruels, inhumains ou dégradants en les renvoyant dans un autre pays en vertu d'une mesure d'extradition, d'expulsion ou de refoulement. » Nous souhaiterions également rappeler au Gouvernement de votre Excellence que le paragraphe 9 de la Résolution de l'Assemblée Générale A/RES/61/153 « demande instamment aux États de ne pas expulser, refouler, extraditer ou transférer de quelque autre façon une personne vers un autre État où il y a des raisons sérieuses de croire qu'elle risquerait d'être soumise à la torture ». En outre, le paragraphe 6.d de la Résolution 8/8 du Conseil des Droits de l'homme exhorte les états à « ne pas expulser, refouler, extraditer ou transférer de quelque autre manière que ce soit une personne vers un autre État si l'on a des raisons sérieuses de croire qu'elle risquerait d'y être soumise à la torture, et considère à cet égard que les assurances diplomatiques, lorsqu'elles interviennent, ne libèrent pas les États des obligations qui leur incombent en vertu du droit international des droits de l'homme, du droit international humanitaire et du droit international des réfugiés, en particulier du principe du non-refoulement ».

Nous souhaiterions également attirer l'attention du Gouvernement de votre Excellence sur les autres normes et principes de droit international applicables en l'espèce. L'article 13 du PIDCP dispose qu'« [u]n étranger qui se trouve légalement sur le territoire d'un Etat partie au présent Pacte ne peut en être expulsé qu'en exécution d'une décision prise conformément

à la loi et, à moins que des raisons impérieuses de sécurité nationale ne s'y opposent, il doit avoir la possibilité de faire valoir les raisons qui militent contre son expulsion et de faire examiner son cas par l'autorité compétente, ou par une ou plusieurs personnes spécialement désignées par ladite autorité, en se faisant représenter à cette fin ». De même, les Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions adoptés par le Conseil Economique et Social dans sa résolution 1989/65 du 24 mai 1989 disposent que : « Nul ne sera envoyé ou extradé de force à destination d'un pays lorsqu'il y aura des raisons valables de craindre qu'il soit victime d'une exécution extrajudiciaire, arbitraire ou sommaire dans ce pays » (principe 5).

Nous prions le Gouvernement de votre Excellence de prendre sans délais toutes les mesures nécessaires afin de garantir la protection de MM. L. L. et B. Nous demandons ainsi au Gouvernement de votre Excellence, conformément à vos obligations internationales, de s'abstenir d'expulser, refouler ou extraditer MM. L.L. L. et R. B., car des motifs sérieux portent à croire que ces personnes seraient soumises à des actes de torture ou seraient exécutées si elles étaient expulsées vers la République démocratique du Congo. Nous vous prions également de bien vouloir transmettre une copie de cette lettre aux autorités compétentes pour statuer sur les demandes d'asile, notamment à la Commission Nationale pour les Réfugiés.

Haiti

Deaths in custody at Les Cayes Prison

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 12 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 15 June 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the deaths of at least 12 detainees at the Les Cayes Prison on 19 January 2010 after Haitian police entered the prison compound to stop a reported prison detainee uprising. Among the 12 deceased persons were Mr. Fredely Percy, Mr. Abner Lisius and Mr. Jacklyn Charles.

According to the reports I have received, the detainee uprising began after a prison guard was attacked while removing waste buckets from "Cell 3". According to reports, armed Haitian police entered the compound, and used tear-gas to quell the detainees. The prison warden's report states that detainees hurled rocks and fired bullets at the police. However, other information I have received alleges that the detainees were unarmed, and that the Haitian police selected specific inmates to kill. Information provided to me also alleges that the Haitian police repositioned detainee corpses, burned surviving prisoners' bloodstained clothing and shoes, and buried detainee corpses in unmarked graves without conducting autopsies or notifying relatives.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Excellency's Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities." Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved.

According to Principle 9 of the Basic Principles on the Use of Firearms by Law Enforcement Officials, lethal force may only be used when strictly unavoidable in order to protect life. Principle 7 states that the arbitrary or abusive use of firearms by law enforcement officials must be punished as a criminal offense.

Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". This principle was reiterated by the Human Rights Council Resolution 8/3 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

Moreover, with respect to the prevention of deaths in custody, States have heightened responsibilities for persons within their custody. In all circumstances, States are obligated both to refrain from committing acts that violate individual rights and to take appropriate measures to prevent human rights abuses by private persons. The general obligation assumed under Article 2(1) by each State party to the ICCPR is, thus, "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant." This obligation has notably far-reaching implications in the custodial context. With respect to the obligation to respect rights, the controlled character of the custodial environment permits States to exercise unusually comprehensive control over the conduct of government officials — police officers, prison guards, soldiers, etc. — in order to prevent them from committing violations.

I urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of Mr. Fredely Percy, Mr. Abner Lisius and Mr. Jacklyn Charles and the remaining nine or more detainees whose names are not known to me with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

Are the facts alleged in the above summary of the case accurate? Please explain whether the use of force by the police was in accordance with international law.

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of Mr. Fredely Percy, Mr. Abner Lisius and Mr. Jacklyn Charles and the other deceased detainees.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to police officers or guards found responsible.

Please indicate whether compensation has been or will be provided to the families of the victims.

Please indicate what measures are in place to ensure that police and prison guards do not use unlawful force.

Guatemala

Asesinatos de los Sres. Sebastian Xuc Coc, Alberto Coc Caal, Amilcar Choc Cal, y de la Sra. Catalina Mucú Maas, defensores de derechos humanos

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 3 hombres, 1 mujer

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Guatemala con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos

Carta de Alegaciones con fecha 14 de marzo de 2011, enviada junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia, información que hemos recibido en relación con los asesinatos del Sr. Sebastian Xuc Coc, del Sr. Alberto Coc Caal, de la Sra. Catalina Mucú Maas y del Sr. Amilcar Choc Cal, todos ellos miembros de la comunidad indígena q'eqchi'e. El Sr. Xuc Coc era un profesor de la comunidad de Quebrada Seca. El Sr. Coc Caal era estudiante de la Universidad de San Carlos y líder espiritual (aj q'ijab) de su comunidad. La Sra. Mucú Maas era estudiante y miembro de la Junta Directiva de la Asociación indígena Ak'Tinamit. Los Sres. Sebastian Xuc Coc, el Sr. Alberto Coc Caal, y la Sra. Catalina Mucú Maas eran líderes comunitarios quienes trabajaban a favor de los derechos de sus comunidades indígenas, en particular de su derecho a la tierra, y habrían participado en negociaciones con las autoridades locales con el objeto de resolver el conflicto de tierras que enfrenta a varias comunidades y a un terrateniente local. El Sr. Amilcar Choc Cal era un amigo de los tres líderes comunitarios.

Según las informaciones recibidas

El 12 de febrero de 2011, a las 06:30 horas aproximadamente, la Sra. Mucú Maas y los Srs. Coc Cal y Xuc Coc se habrían desplazado en barco desde su pueblo Qeq'chi, comunidad Quebrada Seca, situado en la orilla del río, a la Universidad de San Carlos, en Río Dulce, departamento de Izabal. Habrían llegado a Río Dulce aproximadamente dos horas más tarde y habrían dejado su barco en el muelle.

De acuerdo con la información recibida, a las 14:00 horas aproximadamente, el Sr. Coc Caal y el Sr. Xuc Coc habrían ido a comer en un restaurante ubicado cerca del muelle. Según la información recibida, una media hora más tarde, un hombre desconocido habría entrado en el restaurante y habría preguntado por el Sr. Coc Caal y el Sr. Xuc Coc pero ellos ya habrían salido del local.

Supuestamente, a las 17:00 horas, la Sra. Mucú Maas y los Srs. Coc Cal y Xuc Coc habrían terminado sus clases en la universidad y se habrían reunido con su amigo, el Sr. Amilcar Choc Cal. Los cuatro habrían salido en una lancha de Río Dulce con la intención de

regresar a su pueblo. La Sra. Mucú Maas habría llamado a su familia para informarles que estaba volviendo a casa.

Se informa que el 13 de febrero de 2011, miembros de la comunidad Quebrada Seca habrían encontrado la lancha en que viajaban las mencionadas personas. Las mochilas de los cuatro pasajeros estaban todavía dentro de la lancha y habrían notado manchas de sangre y perforaciones de balas en la lancha. Los miembros de la comunidad habrían continuado la búsqueda de los cuatro miembros de su pueblo.

El 14 de febrero de 2011, habrían sido encontrados flotando en el río, los cuerpos sin vida de la Sra. Mucú Maas y los Srs. Coc Cal y Xuc Coc. El 15 de febrero de 2011, habría sido encontrado flotando en el río el cuerpo sin vida del Sr. Amilcar Choc a un kilómetro de donde se encontraron los otros tres cuerpos.

Según la información recibida, las autoridades habrían iniciado una investigación sobre los asesinatos, pero supuestamente, habrían devuelto las mochilas de los cuatro muertos a sus familias, y no habrían recogido las balas para incluirlas en una investigación completa de evidencia.

Se expresa preocupación por las alegaciones recibidas indicando que los asesinatos del Sr. Sebastian Xuc Coc, del Sr. Alberto Coc Caal y la Sra. Catalina Mucú Maas pudieran estar relacionados con su trabajo legítimo de promoción y defensa de los derechos humanos, en particular con su defensa del derecho de su comunidad a la tierra en contra de los intereses de un terrateniente local. Se expresa asimismo preocupación por el asesinato del Sr. Amilcar Choc Cal, el cual acompañaba a los tres líderes comunitarios cuando ocurrieron los hechos señalados.

Así mismo se expresa preocupación por la información recibida señalando un contexto de creciente violencia por parte de actores no estatales, incluyendo amenazas, intimidación y hostigamiento, de defensores de derechos humanos que trabajan en temas relacionados con el derecho a la tierra y derechos de los pueblos indígenas en Guatemala.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos (PIDCP), accedido por Guatemala el 5 Mayo de 1992, en particular los artículos 3 y 6(1) de estos instrumentos respectivamente, que garantizan a todo individuo los derechos a la vida y a la seguridad de su persona. Artículo 6(1) PIDCP dispone que el derecho a la vida sea protegido por la ley y que nadie sea arbitrariamente privado de su vida. Las obligaciones de garantizar los derechos a la vida y a la seguridad de la persona deben ser interpretadas y aplicadas a la luz de la obligación de cada Estado Parte de respetar y garantizar los derechos de todos los individuos que se encuentren en su territorio sin distinción alguna conforme a las disposiciones del artículo 2(1).

Con respeto a las alegaciones de asesinatos, quisiéramos recordar los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias (resolución 1989/65 del Consejo Económico y Social del 24 de mayo de 1989). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias.”

Quisiéramos asimismo llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los

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

Además, quisiéramos referirnos a los artículos siguientes de la mencionada Declaración:

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

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

Con respecto a las alegaciones recibidas indicando que la autoría de la violación de los derechos de los defensores se atribuye a un agente no estatal, nos gustaría llamar la atención del Gobierno de su Excelencia sobre la Resolución del Consejo de Derechos Humanos A/HRC/RES/13/13 de 15 de abril de 2010, la cual reconoce “la necesidad inmediata de poner fin a las amenazas, el acoso, la violencia, incluida la violencia de género, y las agresiones de estados y entidades no estatales contra quienes se dedican a la promoción y protección de los derechos humanos y las libertades fundamentales de todos, así como de adoptar medidas concretas para prevenirlos”. En esta Resolución, el Consejo de Derechos Humanos “insta a los Estados a que promuevan un entorno seguro y propicio en el que los defensores de los derechos humanos puedan actuar libres de obstáculos e inseguridad”.

Asimismo, la Relatora Especial, en su informe a la Asamblea General A/65/223 de 4 de agosto de 2010, párrafos 28 y 29, señala que en el contexto de violaciones de los derechos humanos de los defensores cometidas por agentes no estatales, la responsabilidad de los mismos de respetar los derechos de los defensores “no libera al Estado de las obligaciones que le incumben en virtud de las normas de derechos humanos de respetar, proteger y aplicar los derechos humanos, incluidos los de los defensores de los derechos humanos”. (...) La Relatora Especial sostiene que la obligación del Estado de proteger “consiste, en primer lugar, en asegurar que los defensores no sufran violaciones de sus derechos a manos de agentes no estatales. La falta de protección podría, en determinadas circunstancias, comprometer la responsabilidad del Estado. En segundo lugar, los Estados deberían proporcionar un recurso eficaz a los defensores cuyos derechos humanos sean violados. Para ello, todas las violaciones de los derechos de los defensores deberían investigarse con prontitud e imparcialidad y los infractores deberían ser sometidos a juicio. Es fundamental combatir la impunidad por las violaciones cometidas contra los defensores, para que éstos puedan trabajar en un entorno seguro y propicio.”

En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar al Gobierno de Su Excelencia a que adopte todas las medidas necesarias para investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de los asesinatos del Sr. Sebastian Xuc Coc, del Sr. Alberto Coc Caal, de la Sra. Catalina Mucú Maas y del Sr. Amilcar Choc Cal. Quisiéramos asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

¿Son exactos los hechos a los que se refieren las alegaciones presentadas?

Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de estos casos.

Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/perpetradores?

Por favor, sírvanse proporcionar información detallada relativo a las medidas de protección que existen para los defensores de derechos humanos, en particular en la comunidad de Quebrada Seca teniendo en cuenta la situación de riesgo en que se realizan su trabajo.

Por favor, indiquen si se han proporcionado o se van a proporcionar compensación a la familia de las víctimas.

Asesinato de los Sres. Víctor Aroldo Leiva Borrallo, Juan Manuel Orozco Ambrosio, Nexo Pineda y Saulo Fernando González Estrada defensores de derechos humanos, y miembros del Colectivo Caja Lúdica.

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 4 hombres

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Guatemala con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos

Carta de Alegaciones con fecha 21 de febrero de 2011, enviada junto con la Relator Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia la información que hemos recibido en relación con el reciente asesinato del Sr. Víctor Aroldo Leiva Borrallo así como de los señores Juan Manuel Orozco Ambrosio, Nexo Pineda y Saulo Fernando González Estrada en 2009. El Sr. Víctor Leiva era un joven artista, formador, activista y dedicado al arte comunitario, fue miembro fundador y por muchos años parte del Colectivo Caja Lúdica, una organización dedicada a la promoción de la consolidación de la paz y convivencia a través del arte, la sensibilización y la formación de jóvenes.

Según las informaciones recibidas

El 2 de febrero de 2011, aproximadamente a las 19:30 horas, el Sr. Víctor Leiva fue asesinado en el centro de la Ciudad de Guatemala, en el momento de salir de su clase de baile en la sede de la Asociación Trasciende, una asociación conformada por jóvenes artistas provenientes de diferentes zonas de la ciudad capital de Guatemala, en su mayoría de las áreas marginales. El Sr. Leiva murió tras recibir dos impactos de bala en la cabeza, aparentemente en un ataque organizado. Información recibida alega que las características de éste caso indicarían actuación de grupos organizados ilegales.

Según se informa, otros tres miembros del Colectivo Caja Lúdica también fueron asesinados en 2009. El Sr. Juan Manuel Orozco Ambrosio, fundador del Grupo Artístico Iqui Balam del Asentamiento Mario Alioto, tallerista en escuelas e instituciones educativas de Villa Nueva y facilitador en Escuelas Abiertas, fue asesinado por arma de fuego el 6 de abril de 2009 en la Ciudad de Guatemala. El Sr. Nexo Pineda, formador y colaborador de organizaciones como CEIBA, HIJOS y ACJ, fue asesinado por arma de fuego el 23 de mayo de 2009 en la Ciudad de Guatemala. El Sr. Saulo Fernando González Estrada, creador y gestor cultural, co – fundador del Grupo Artístico Iqui Balam y del Centro Cultural Punto de Arte y facilitador en Escuelas Abiertas, fue asesinado por arma de fuego el 30 de mayo de 2009 en la Ciudad de Guatemala.

Se expresa grave preocupación por el asesinato del Sr. Víctor Leiva, así como por los asesinatos de los otros tres miembros del Colectivo Caja Lúdica en 2009 y por las alegaciones recibidas indicando que el asesinato de Víctor Leiva pudiera estar relacionado 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 Guatemala, afectando particularmente las organizaciones juveniles.

Sin implicar, de antemano, una conclusión sobre los hechos, respecto de las alegaciones de asesinatos del Sr. Víctor Leiva y de otros tres miembros del Colectivo Caja Lúdica, quisiéramos recordar los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias (resolución 1989/65 del Consejo Económico y Social del 24 de mayo de 1989). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 prevé que los Gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias.”

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

Además, quisiéramos referirnos al artículo siguiente:

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

Con respeto a las alegaciones de creciente violencia e inseguridad para los defensores de los derechos humanos en Guatemala, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos (PIDCP), accedido por Honduras el 5 May de 1992, en particular los artículos 3 y 6(1) de estos instrumentos respectivamente, que garantizan a todo individuo los derechos a la vida y a la seguridad de su persona. El artículo 6(1) del PIDCP dispone que el derecho a la vida sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

Asimismo, consideramos relevante hacer referencia a las conclusiones emitidas por el Grupo de Trabajo del Examen Periódico Universal, las que recomiendan tomar medidas para asegurar la protección de los defensores de derechos humanos y tomar medidas concretas para asegurar la investigación rigurosa y sin dilación de las denuncias de asesinatos, amenazas, agresiones y actos de intimidación contra defensores de los derechos humanos, y hacer responder a los autores ante la justicia, y luchar contra la impunidad de las agresiones contra defensores de los derechos humanos (informe del Grupo de Trabajo del Examen Periódico Universal A/HRC/8/38, párrafos 21-23; 30; 36, adoptado por decisión del Consejo de Derechos Humanos 8/119 reproducida en su informe A/HRC/8/52, página 65).

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

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos intentar clarificar los hechos traídos a mi atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiera obtener su cooperación y sus observaciones sobre los siguientes asuntos:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja o denuncia por parte de las supuestas víctimas o en su nombre?
3. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, u otro tipo de pesquisa que se haya llevado a cabo respecto de estos casos.

Sírvanse informar si se van a adoptar medidas para garantizar la protección de otros miembros del Colectivo Caja Lúdica tomando en cuenta que durante los últimos dos años cuatro miembros de la organización han sido asesinados.

Sírvanse informar sobre qué medidas adopta el Estado para prevenir este tipo de actos de violencia contra defensores de derechos humanos particularmente vulnerables, tales como las organizaciones de jóvenes.

Secuestro y asesinato de la Sra. Emilia Quan, defensora de derechos humanos

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 1 mujer

Carácter de la respuesta: Response available at <http://www2.ohchr.org/english/issues/executions/annual.html>

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Guatemala con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos

Llamamiento urgente con fecha 28 de diciembre de 2010, enviado junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con el secuestro y posterior asesinato de la Sra. Emilia Quan, defensora de derechos humanos y socióloga e investigadora del Centro de Estudios y Documentación de la Frontera Occidental de Guatemala (CEDFOG), la cual habría colaborado con las Naciones Unidas en el marco de su trabajo como investigadora. CEDFOG es una organización civil sin ánimo de lucro, con sede en Huehuetenango, que promueve los derechos humanos mediante la realización de investigaciones sociales, culturales, políticas y económicas.

Según las informaciones recibidas, el 7 de diciembre de 2010, la Sra. Quan habría sido secuestrada en Paquix, Huehuetenango, junto con el señor Víctor López, conductor de la organización, cuando se desplazaban hacia Chiantla en un vehículo de CEDFOG. Según los informes recibidos, este vehículo habría sido interceptado por hombres fuertemente armados. El Sr. López habría sido posteriormente encontrado golpeado y amordazado en los Llanos de San Miguel del municipio de San Juan Ixcoy. Al día siguiente, 8 de diciembre, el cuerpo de Emilia Quan habría sido encontrado sin vida en el municipio de Todos Santos Cuchumatán, Huehuetenango.

Según la información recibida, dos personas sospechosas del secuestro de Emilia Quan habrían sido detenidas el mismo día 7 de diciembre de 2010 por la Policía Nacional Civil en Santa Cruz Barillas pero habrían sido posteriormente asesinadas en el marco de un linchamiento popular.

Se expresa grave preocupación por el secuestro y posterior asesinato de la Sra. Qan y por las alegaciones de que estos hechos pudieran estar relacionados con sus actividades de promoción y protección de los derechos humanos. Asimismo, se expresa preocupación por la integridad física y mental de los trabajadores de CEDFOG. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en Guatemala.

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

Nos gustaría referirnos también a la Resolución 8/3 del Consejo de Derechos Humanos sobre las ejecuciones extrajudiciales, sumarias o arbitrarias que “[r]eitera la obligación que incumbe a todos los Estados de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables,... de dar una indemnización adecuada, dentro de un plazo razonable, a las víctimas o a sus familiares y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias” (A/HRC/RES/8/3, párrafo 4, reiterando la resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, quisiéramos recordar el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 que prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias.”

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

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

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

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

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto del asesinato de la Sra. Quan y de las dos personas linchadas.
3. Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación al asesinato de la Sra. Quan y de las dos personas linchadas. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/perpetradores?
4. Por favor, indiquen si se ha proporcionado o se va a proporcionar compensación a la familia de la víctima.
5. Tras los hechos ocurridos, por favor, sírvanse indicar qué medidas se van a adoptar para garantizar la protección de los trabajadores de CEDFOG.

Honduras

El asesinato de 31 personas lesbianas, gays, bisexuales, transgénero y travestís

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 31 personas

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Honduras con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos

Carta de Alegaciones con fecha 9 de febrero de 2011, enviada junto con la Relator Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia información que hemos recibido en relación con el asesinato de 31 personas lesbianas, gays, bisexuales, transgénero y travestís durante los 18 últimos meses.

Según las informaciones recibidas

Durante los 18 últimos meses, las siguientes 31 personas lesbianas, gays, bisexuales, transgénero y travestís habrían sido asesinadas en el país:

1. Christian Roberto Thomson Henríquez, el 29 de junio de 2009;
2. Vicky Hernández Castillo, el 30 de junio de 2009;
3. Valeria, el 30 de junio de 2009;
4. Martina Jackson, el 30 de junio de 2009;
5. Fabio Adalberto Aguilera Zamora, el 4 de julio de 2009;
6. Héctor Emilio Maradiaga Snaider, el 9 de agosto de 2009;
7. Michelle Torres el 30 de agosto de 2009;
8. Enrique Andrés García Nolasco, el 2 de septiembre de 2009;
9. "Salomé", el 20 de septiembre de 2009;

10. "Sayda", el 20 de septiembre de 2009;
11. Edwin Renán Díaz Fajardo, el 23 de septiembre de 2009;
12. Marión Lanza, el 9 de septiembre de 2009;
13. Montserrat Maradiaga, el 10 de octubre de 2009;
14. Zelaya, el 26 de octubre de 2009;
15. "Larissa", el 2 de noviembre de 2009;
16. José Luís Salandía, el 2 de noviembre de 2009;
17. Joven (24 años), el 4 de noviembre de 2009;
18. Giuseppe Nicolossi Chilabra, el 18 de noviembre de 2009;
19. Marco Tulio Aguilar, el 6 de diciembre de 2009;
20. Walter Orlando Trochez, el 13 de diciembre de 2009;
21. Luís Arturo Murillo, el 14 de diciembre de 2009;
22. Ernest Werner Sheweinfurth Pinel, el 13 de enero de 2010;
23. Nicolás Asfura Asfura, el 18 de febrero de 2010;
24. Juan Manuel Posse Herrera, el 1 de junio de 2010;
25. José Luís Sevilla Chiang, el 11 de julio de 2010;
26. Germán Serrano Hernández, el 31 de agosto de 2010;
27. Jorge Nelson Flores, el 8 de noviembre de 2010;
28. Idania Roberta Sevilla Raudales, el 29 de noviembre de 2010;
29. Luis Alexis Alvarado Hernández, el 22 de diciembre de 2010;
30. Oscar Martínez Salgado, el 22 de diciembre de 2010;
31. Cheo, el 2 de enero de 2011.

Una de estas personas, el Sr. Walter Orlando Trochez, un prominente defensor de los derechos humanos de la comunidad lesbiana, gay, bisexual y transgénero e integrante del Centro de Promoción e Investigación de los Derechos Humanos (CIPRODEH) fue el objeto de una comunicación conjunta por parte del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el 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 enviada el 19 de enero 2010. Lamentablemente, hasta la fecha, no se ha recibido respuesta por parte del Gobierno de su Excelencia.

Tres de las personas mencionadas habrían sido recientemente asesinadas. Hemos recibido información más detallada sobre los casos siguientes:

El 22 de diciembre de 2010, un travesti de 23 años, llamada Lorenza Alvarado Hernández (nombre legal: Luis Alexis) habría sido encontrada muerta en un una zanja en Comayagüela. Según las informaciones recibidas, su cuerpo habría sido golpeado e incinerado. La información recibida indica también que los golpes en su rostro causados por lapidación habrían sido tan graves que sus restos habrían quedado prácticamente irreconocibles. Además se expresa preocupación por las alegaciones recibidas indicando que Lorenza Alvarado Hernández habría sido violada.

Ese mismo día, otra travesti de 45 años, llamada Lady Oscar Martínez Salgado (nombre legal: Oscar), habría sido encontrada en su casa del Barrio El Rincón en Tegucigalpa. Según las informaciones recibidas, su cuerpo habría sido incinerado y mostraba numerosas puñaladas. Vecinos reportaron que observaron a dos individuos sospechosos salir corriendo de su casa cuando inició el fuego.

El 2 de enero de 2011, otra joven travesti conocida como Cheo habría sido encontrada asesinada en la calle principal de Colonia Almeda en Tegucigalpa. Según informaciones recibidas, su cuerpo habría mostrado heridas de puñal en el pecho.

Los asesinatos de personas transgénero en Honduras, así como los asesinatos de defensores de sus derechos, fueron ya el objeto de una comunicación enviada al Gobierno de Honduras el 23 de enero del 2009 por parte del Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, la Relatora Especial sobre la situación de los defensores de los derechos humanos y la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias. El Gobierno de Honduras no ha respondido a dicha comunicación hasta la fecha.

Se expresa grave preocupación por el asesinato de estas 31 personas y por las alegaciones de que estos hechos pudieran estar relacionados con la orientación sexual de las víctimas. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para las personas lesbianas, gays, bisexuales, transgénero y travestís en Honduras.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos (PIDCP), ratificado por Honduras el 25 de Agosto 1997, en particular los artículos 3 y 6(1) de estos instrumentos respectivamente, que garantizan a todo individuo los derechos a la vida y a la seguridad de su persona. El artículo 6(1) del PIDCP dispone que el derecho a la vida sea protegido por la ley y que nadie sea arbitrariamente privado de su vida. Las obligaciones de garantizar los derechos a la vida y a la seguridad de la persona deben ser interpretadas y aplicadas a la luz de la obligación de cada Estado Parte de respetar y garantizar los derechos de todos los individuos que se encuentren en su territorio sin distinción alguna conforme a las disposiciones del artículo 2(1) PIDCP.

Con respeto a las alegaciones de asesinatos, quisiéramos recordar los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias (resolución 1989/65 del Consejo Económico y Social del 24 de mayo de 1989). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 prevé que los Gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias.”

Quisiéramos también llevar a la atención del Gobierno de su Excelencia el artículo 4 (c & d) de la Declaración de las Naciones Unidas sobre la Eliminación de la Violencia contra la Mujer, el cual afirma la responsabilidad de los Estados de proceder con la debida diligencia a fin de prevenir, investigar y, conforme a la legislación nacional, castigar todo acto de violencia contra la mujer, ya se trate de actos perpetrados por el Estado o por particulares. Con este fin, los estados deben establecer, en la legislación nacional, sanciones penales, civiles, laborales y administrativas, para castigar y reparar los agravios infligidos a las mujeres que sean objeto de violencia; debe darse a éstas acceso a los mecanismos de la justicia y, con arreglo a lo dispuesto en la legislación nacional, a un resarcimiento justo y

eficaz por el daño que hayan padecido; los Estados deben además informar a las mujeres de sus derechos a pedir reparación por medio de esos mecanismos.

También quisiéramos referirnos a la Resolución 2005/41 de la Comisión de Derechos Humanos sobre la Eliminación de la Violencia Contra la Mujer, la cual subraya que es preciso dotar a las mujeres de los medios para protegerse contra la violencia y, al respecto, recalca que la mujer tiene derecho a ejercer el control y decidir libre y responsablemente sobre los asuntos relacionados con su sexualidad, incluida la salud sexual y reproductiva, libre de toda coacción, discriminación y violencia.

Asimismo, consideramos relevante hacer referencia a las conclusiones emitidas por el Grupo de Trabajo del Examen Periódico Universal que han contado con el apoyo del Gobierno de Su Excelencia, las que recomiendan tomar medidas concretas para la pronta, adecuada y transparente investigación de los asesinatos, la intimidación y otros abusos contra las personas de la comunidad lesbiana, gay, bisexual y transgénero, y que recomiendan intensificar las acciones y adoptar medidas amplias para combatir la violencia contra las mujeres, niños, jóvenes y personas lesbianas, gays, bisexuales, transgénero y travestís (A/HRC/WG.6/9/L.8, párrafos 82.36 y 82.38).

Finalmente quisiéramos llamar la atención del Gobierno de su Excelencia sobre el comunicado de prensa de la Comisión Interamericana de Derechos Humanos emitido el 20 de enero 2011, en que observa con profunda preocupación las amenazas, graves hechos de violencia y asesinatos de integrantes de la comunidad transgénero en Honduras, y en que hace un llamado al Estado de Honduras “a prevenir los actos de discriminación y violencia contra los y las integrantes de las comunidades LGBTI [lesbianas, gays, personas bisexuales, transgénero e intersex] y a investigar, juzgar y sancionar a los responsables y reparar en forma pronta y diligente las violaciones” (<http://www.cidh.oas.org/Comunicados/Spanish/2011/4-11sp.htm>).

Quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas para investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

Es nuestra responsabilidad, de acuerdo con los mandatos que me han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen forense y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de estos casos.
3. Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a estos casos. ¿Se ha impuesto alguna sanción penal o disciplinaria a los supuestos culpables/ perpetradores?
4. Tras los hechos ocurridos, por favor, sírvanse proporcionar información detallada sobre las medidas que han sido adoptadas o que se van a adoptar para garantizar la protección de las personas lesbianas, gays, bisexuales, transgénero y travestís.
5. Por favor, indiquen si se ha proporcionado o se va a proporcionar compensación a la familia de las víctimas.

Honduras: dos incidentes violentos que habrían causado la muerte de, respectivamente, 14 y 5 personas

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 19 personas

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Honduras con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos

Carta de Alegaciones con fecha 9 de diciembre de 2010, enviada por el Relator Especial. En este contexto, quisiera señalar a la atención urgente del Gobierno de Su Excelencia la información que he recibido en relación con dos incidentes violentos que habrían causado la muerte de, respectivamente, 14 y 5 personas.

Según la información recibida

El día 30 de octubre de 2010, en la colonia Felipe Zelaya del sector Rivera Hernández, perteneciente a la ciudad de San Pedro Sula, departamento de Cortés, habría tenido lugar el asesinato de catorce personas acribilladas a balazos, por hombres encapuchados armados con fusiles, mientras se disponían a presenciar un partido de fútbol.

De acuerdo con testigos, los hombres habrían descendido armados de varios vehículos y comenzado a disparar contra los jóvenes que, como cada sábado, jugaban fútbol en el barrio Felipe Zelaya. Diez de los jóvenes habrían muerto en la cancha, mientras que cuatro habrían fallecido durante el transporte al centro hospitalario Mario Catarino Rivas.

El lunes 15 de noviembre del 2010, cinco miembros del Movimiento Campesino del Aguán (MCA) fueron asesinados en la finca El Tumbador en el sector de Trujillo de Honduras. Hasta este momento se habría confirmado la muerte de las siguientes personas: Teodoro Acosta, Raúl Castillo, Ignacio Reyes, Siriaco de Jesús Muñoz y José Luis Saucedo. Según la información recibida, los asesinatos habrían ocurrido cuando aproximadamente 200 guardias de seguridad, presuntamente obedeciendo órdenes del productor de palma africana Miguel Facussé Barjum, realizaban un desalojo violento en la finca El Tumbador y dispararon con armas de grueso calibre contra los campesinos miembros del MCA. Además se habrían reportado varios heridos y un desaparecido producto del ataque.

Estos hechos representarían una nueva ola de violencia en relación a los conflictos agrarios en el Bajo Aguán. Sólo en 2010, incluyendo a las víctimas de este ataque reciente, habrían sido asesinados 16 campesinos organizados en cooperativas y grupos campesinos afiliados al Movimiento Campesino de Aguán (MCA) y al Movimiento Unificado Campesino del Aguán (MUCA). Esta relatoría ya ha enviado una comunicación expresando preocupación sobre la violencia y los asesinatos en Bajo Aguán el 22 de abril de 2010, a la cual el Gobierno de su Excelencia ha respondido en fecha 18 de junio de 2010.

Sin implicar, de antemano, una conclusión sobre los hechos, deseo llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos (PIDCP) (ratificado el 25 de agosto 1997. Los artículos 3 y 6 de estos instrumentos respectivamente garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que estos derechos sean protegidos por la ley y que nadie sea arbitrariamente privado de su vida.

En este contexto, también quisiera recordar la Observación General 31 al PIDCP del Comité de Derechos Humanos que establece, en el párrafo 8, que “sólo se podrán cumplir plenamente las obligaciones positivas de los Estados Parte de garantizar los derechos reconocidos en el Pacto si el Estado protege a las personas, no sólo contra las violaciones

de los derechos reconocidos en el Pacto que cometan sus agentes, sino también contra los actos que cometan particulares o entidades”, y que “puede haber circunstancias en las que, por no haberse garantizado los derechos reconocidos en el Pacto como se dispone en el artículo 2, los Estados Parte infrinjan estos derechos permitiendo que particulares o entidades cometan tales actos o no adoptando las medidas apropiadas o no ejerciendo el cuidado debido para prevenir, castigar, investigar o reparar el daño así causado”.

Finalmente, como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” (Resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias”.

Apelo pues al Gobierno de Su Excelencia a fin que conduzca una investigación imparcial y transparente sobre las circunstancias que rodearon la muerte de las víctimas arriba mencionadas, a fin de tomar todas las medidas judiciales y disciplinarias que aseguren que los responsables sean traducidos en justicia, así como a fin de compensar a las familias de las víctimas.

Es mi responsabilidad, de acuerdo con el mandato que me ha sido otorgado por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a mi atención. En este sentido, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Quiénes fueron los autores de la matanza en el campo de fútbol?
3. ¿Cuál es el régimen jurídico aplicable a estos guardias de seguridad que supuestamente trabajan para empresarios?
4. Por favor, proporcione detalles y, si estuvieran disponibles, los resultados de cualquier investigación policial, judicial u otras que se hubieran llevado a cabo en relación con la muerte de las víctimas y los otros hechos alegados.
5. Por favor, indique cualquier compensación que haya sido atribuida a las familias de las víctimas.

Honduras: asesinato de los Sres. José Bayardo Mairena Ramírez y Manuel Juárez, y David Meza periodistas, el Sr. Palacios Arteaga, director de noticias de la televisora Canal 5 del Aguán, y el Sr. Joseph Hernandez

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 5 hombres

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Honduras con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos

Carta de Alegaciones con fecha del 20 de abril de 2010, enviada junto con el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión, y la Relator Especial sobre la situación de los defensores de los Derechos Humanos.

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con 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 Canal 4, una televisora de Televisión R.Z., y asimismo trabajaban en Radio Excelsior, una emisora hondureña. El Sr. Mairena Ramírez también era director de Radio Excelsior, integrante de la Asociación de la Prensa Hondureña, y estudiante de periodismo en el Centro Universitario Regional Nor-Oriental en Juticalpa. El Sr. Palacios Arteaga era director de noticias de la televisora Canal 5 del Aguán.

Según las informaciones recibidas

El 26 de marzo de 2010, el Sr. Mairena Ramírez y el Sr. Juárez habrían sido asesinados. Los dos periodistas estaban 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 se les habría acercado mientras su coche estaba en marcha y hombres no identificados habrían disparado contra el Sr. Mairena Ramírez y el Sr. Juárez con varias ráfagas de tiros de ametralladora. Posteriormente, los agresores se habrían detenido y bajado de su vehículo para continuar disparando y asegurarse que los dos periodistas habían fallecido. Se informó que el coche del Sr. Mairena Ramírez tenía 21 agujeros de bala después del ataque. El Sr. Mairena Ramírez falleció en el ataque. 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.

Durante la noche del 14 de marzo, el Sr. Palacios Arteaga fue 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 identificadas le habrían disparado con fusiles automáticos AK-47, y el Sr. Palacios Arteaga habría recibido al menos 30 impactos de bala. Se informó que el coche en el que viajaba habría recibido 42 impactos de bala, y que dos personas que le acompañaban en el coche resultaron heridas.

Según las informaciones recibidas, el Sr. Palacios Arteaga fue acosado durante meses recientes debido a su postura pública crítica al golpe de Estado de Junio de 2009, y la cobertura que realizó 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 habrían sido implementadas por las autoridades hondureñas.

Durante las últimas semanas, el Sr. Palacios Arteaga habría investigado el conflicto agrario de 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. Posteriormente, el mismo habría recibido nuevas amenazas de muerte.

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 han sido asesinados en Honduras en los primeros tres meses de 2010. El 1 de marzo, el Sr. Joseph Hernández Ocho fue asesinado en la ciudad de Tegucigalpa y la señora Karol Cabrera resultó 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" fue asesinado en La Ceiba, a unos 300 metros de su domicilio.

Hasta la fecha no habría ninguna información disponible en relación con las investigaciones de estos asesinatos ni sobre las medidas cautelares solicitadas a fin de proteger a otros periodistas y defensores de Derechos Humanos en riesgo.

Se teme que los asesinatos del Sr. José Bayardo Mairena Ramírez, el Sr. Manuel Juárez y el Sr. Nahun Palacios Arteaga podrían estar relacionados con las actividades que 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 expresa profunda preocupación por la integridad física y psicológica de los periodistas y de 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. El Gobierno de su Excelencia tiene la responsabilidad de denunciar e investigar de manera exhaustiva las violaciones cometidas contra los defensores de Derechos Humanos y de enjuiciar a sus autores.

Sin implicar, de antemano, una conclusión sobre los hechos, nos permitimos hacer un llamamiento urgente al Gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

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

Además, quisiéramos referirnos a los artículos siguientes:

- -el artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de Derechos Humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos

relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público sobre esas cuestiones por conducto de esos medios y de otros medios adecuados.

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

Quisiéramos, igualmente, llamar la atención del gobierno de su Excelencia sobre otras normas y principios que son particularmente significativos con respecto a las denuncias mencionadas precedentemente:

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

En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar a su Gobierno a que adopte todas las medidas necesarias para proteger la independencia del Poder Judicial, en especial la de los jueces provisorios. Quisiéramos, asimismo, instarle a que adopte las medidas eficaces para evitar que tales hechos se repitan.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos traídos a nuestra atención. Es nuestro deber informar sobre esos casos al Consejo de Derechos Humanos, y en este sentido estaríamos muy agradecidos si pudiéramos contar con su cooperación y sus observaciones sobre los siguientes asuntos:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja?
3. Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor proporcione información detallada sobre las medidas de protección adoptadas para garantizar la integridad física y psicológica del Sr. Palacios Arteaga.

Honduras: Violencia en el conflicto agrario entre campesinos y grandes propietarios en la zona del Bajo Aguán.

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: campesinos y grandes propietarios en la zona de Bajo Aguán

Carácter de la respuesta: Cooperativa pero respuesta incompleta

Observaciones del Relator Especial

El Relator Especial agradece la respuesta transmitida por parte del Gobierno pero permanece preocupado sobre la situación en cuanto al conflicto agrario que existe en la zona del Bajo Aguán.

Carta de alegaciones con fecha 22 de abril de 2011, enviada por el Relator Especial

En este contexto, quisiera señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación a la violencia en el contexto del conflicto agrario entre campesinos y grandes propietarios en la zona del Bajo Aguán.

De acuerdo con las informaciones recibidas:

El Movimiento Unificado Campesino del Aguán (MUCA) habría organizado desde hace varios años ocupaciones en tierras pertenecientes a grandes empresarios de la zona. En enero de 2010 se llevaron a cabo algunos desalojos en la zona, y en la actualidad persisten varias zonas ocupadas.

En los últimos años el nivel de conflictividad en la zona habría sido bastante elevado y existirían numerosas denuncias de presencia en la zona de grupos privados armados que prestarían servicios de seguridad a los grandes propietarios. Tras la crisis política, el conflicto se habría exacerbado porque se paralizó un acuerdo al que los campesinos habían llegado con el gobierno Zelaya. Esta zona habría sido bastante activa en la protesta contra la crisis política y se habría desplazado un fuerte operativo de seguridad, incluyendo las fuerzas armadas (FFAA), que se mantuvo permanente en la zona.

Además, en los últimos tiempos y, particularmente, en el año 2010, se habrían producido numerosos enfrentamientos en los que habrían fallecido tanto campesinos como personas empleadas por estos grupos de seguridad. Desde el mes de enero de 2010, ocho miembros del MUCA habrían perdido sus vidas en incidentes violentos cuya responsabilidad se atribuye a estos grupos de seguridad privada: Juan Ramón Mejía quien habría muerto el 31 de enero como consecuencia de golpes múltiples; el 4 de febrero habrían sido asesinados Francisco Montes e Isidro Cano miembros de la Cooperativa Buenos Amigos; el 14 de febrero habría sido asesinado Feliciano Santos, miembro de la cooperativa 21 de julio; el 17 de marzo habrían sido asesinados José Antonio Cardoza y José Carías, directivos de la cooperativa Brisas de COHDEFOR, en Bonito Oriental; el 1 de abril, habría sido asesinado Miguel Alonso Oliva, por un guardia de seguridad de una de las plantaciones de palma africana en el Valle del Aguán; y el 7 de abril, José Leonel Álvarez Guerra, integrante de la Cooperativa La Confianza, habría sido asesinado por dos hombres en motocicleta, cuando llegaba a su casa en el barrio Manga Seca, en Tocoa, Colón. Igualmente, durante éste periodo, se habría denunciado la muerte de algunos guardias de seguridad en enfrentamientos con campesinos. Según la información recibida, se desconoce el estado procesal de las investigaciones sobre estos hechos.

Desde el 9 de abril se habría desplegado un amplio operativo policial y militar en la zona donde, de acuerdo a las autoridades, tomarían parte 2000 efectivos. El MUCA y otras organizaciones consideran que la presencia sería mucho mayor, y que hasta 7000 efectivos

formarían parte del mismo. De acuerdo a las autoridades, este operativo respondería a una iniciativa general de desarme y no directamente al conflicto por las tierras. De acuerdo a las informaciones recibidas, durante estos días se habrían instalado retenes en la zona y se habrían producido algunas detenciones de líderes del MUCA. Además, el Ministerio Público habría abierto varios procesos penales contra líderes del MUCA por usurpación, solicitando orden de prisión contra 40 de ellos.

El día sábado 10 de abril las fuerzas militares y policiales habrían tomado control de toda la zona, desplazando para ese propósito tanquetas, morteros, lanchas rápidas, comandos militares y vehículos especializados de combate todo terreno, cerrando todos los accesos que conducen a la Cooperativa La Confianza. El domingo 11 de abril la Cooperativa Guadalupe Carney habría sido sitiada por el ejército y la policía. Dicha cooperativa habría sido escenario en septiembre de 2008 de enfrentamientos entre campesinos y terratenientes de la zona. El lunes 12 de abril las fuerzas militares y policiales habrían mantenido control de todas las entradas y salidas del departamento de Colón: Hacia Olancho, Olanchito y San Pedro Sula, y control total de la Laguna de Guaymoreto, adyacente al Valle. El día 13 de abril, en horas de la madrugada las fuerzas militares y policiales habrían entrado las viviendas de afiliados a la Cooperativa El Despertar, donde habrían detenido a Ulises Láinez y Vicente Padilla, quienes después de cuatro horas de privación de su libertad habrían sido puestos en libertad.

El día sábado, 17 de abril, el presidente de la República, Porfirio Lobo Sosa, habría firmado un acuerdo con representantes del MUCA, con el que se pondría fin al conflicto de tierras y el gobierno se comprometería a otorgar a 28 organizaciones campesinas once mil hectáreas de tierra y otras prebendas sociales. Sin embargo, las autoridades de las Fuerzas Armadas aseguraron que los operativos castrenses en la zona permanecerían y obedecerían a la lucha contra el crimen organizado, dado que la zona presentaría fuerte presencia de grupos de delincuencia organizada ligada al narcotráfico.

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

Asimismo, el Principio 1 de los Principios relativos a una eficaz prevención e investigación de las ejecuciones extrajudiciales, arbitrarias o sumarias establece que “No podrán invocarse para justificar esas ejecuciones circunstancias excepcionales, como por ejemplo, el estado de guerra o de riesgo de guerra, la inestabilidad política interna ni ninguna otra emergencia pública” [y que] “Esas ejecuciones no se llevarán a cabo en ninguna circunstancia...”

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extrajudiciales, arbitrarias o sumarias.” (Resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extrajudicial, arbitraria o sumaria, y el principio 9 prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e

imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias”

Apelo pues al Gobierno de Vuestra Excelencia a fin que conduzca una investigación imparcial y transparente sobre las circunstancias que rodearon la muerte de las víctimas arriba mencionadas a fin de tomar todas las medidas judiciales y disciplinarias que aseguren que los responsables sean traducidos en justicia, así como a fin de compensar a las familias de las víctimas.

Es mi responsabilidad, de acuerdo con el mandato que me ha sido otorgado por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

¿Son exactos los hechos a los que se refieren las alegaciones presentadas?

Por favor, proporcione los detalles y, cuando estuvieren disponibles, los resultados de cualquier investigación policial, judicial u otras que se hubieran llevado a cabo en relación con la muerte de las víctimas y los otros hechos alegados.

Por favor, indique cualquier compensación que haya sido atribuida a las familias de las víctimas.

Respuesta del Gobierno

Mediante una carta fechada el 28 de junio de 2010, el Gobierno transmitió una respuesta a la comunicación con fecha 22 de abril de 2010.

Si los hechos alegados son Veraces, en relación a este punto me permito informarle que la Dirección Nacional de Investigación Criminal en apego irrestricto a la Constitución de la República, Ley Orgánica de la Policía Nacional, Código Procesal Penal, la Carta de las Naciones Unidas, La Declaración Universal de los Derechos Humanos y demás Convenios Internacionales en materia de Derechos Humanos vigentes en Honduras, ha realizado desde el primer momento que tuvo conocimiento de las noticias criminales las cuales supuestamente se desprenden en torno a dicho conflicto, una investigación objetiva, imparcial y transparente; la cual se ha efectuado bajo la dirección técnica jurídica del Ministerio Público y con el más absoluto respeto de los derechos humanos; tanto de las víctimas como de los posibles sospechosos.

En ese sentido con el más alto grado de conciencia y responsabilidad consideramos que no hay un marco pleno de respeto a los Derechos Humanos sin Democracia, ni Estado de Derecho sin respeto a los Derechos Fundamentales. Bajo ese esquema una función vital del Estado es dotar a su población de seguridad Jurídica y Seguridad Pública en los distintos niveles de Manifestación; por lo tanto nuestro compromiso en el presente informe es transmitirle los datos más exactos a los hechos presentados en sus alegaciones por parte del Movimiento Unificado Campesino del Aguan (MUCA) los cuales describimos de la siguiente manera:

- JUAN RAMON MEJIA: Se hizo una búsqueda exhaustiva en nuestras bases de datos y en los libros de registros del Departamento de Delitos contra la Vida del Departamento de Colon, no encontrándose ninguna persona fallecida que responda a ese nombre.
- FRANCISCO MONTES: Se hizo una búsqueda exhaustiva en nuestras bases de datos y en los libros de registros del Departamento de Delitos contra la Vida del Departamento de Colon, no encontrándose ninguna persona fallecida que responda a ese nombre.

- ISIDRO CANO: Se hizo una búsqueda exhaustiva en nuestras bases de datos y en los libros de registros del Departamento de Delitos contra la Vida del Departamento de Colon, no encontrándose ninguna persona fallecida que responda a ese nombre.
- Al momento de ser presentado en la audiencia inicial, se le decretaron medidas sustitutivas de prisión y actualmente, reside en su casa de habitación sita en la Aldea de Ocotes Altos.
- FELICIANO SANTOS: Se revisó el libro de registros del Departamento de Delitos contra la Vida de la Jefatura Municipal de Trujillo Colon y se encontró un ciudadano que respondía a ese nombre. Su levantamiento cadavérico se realizó el día 14 de febrero del 2010 a las 14:55 hrs. en la aldea Aguamarilla desvío a Santa Rosa de Aguan. El cuerpo fue encontrado a orillas de la carretera pavimentada que conduce de Tocoa a Aguamarilla. La causa de la muerte fue lesiones, provocadas por proyectiles disparados por arma de fuego. En la escena se lograron recolectar varios casquillos de calibre 9 mm.

Hasta el momento, aunque se han hechos esfuerzos importantes para el esclarecimiento del caso, no ha sido posible identificar un testigo o algún indicio, que nos pueda servir para identificar a los posibles autores.

- JOSE ANTONIO CARDOZA: En fecha 17 de marzo del año 2010, se realizó levantamiento cadavérico en el lugar denominado Aldea Carbonales en el Municipio de Bonito Oriental de este ciudadano. Causa de la muerte: Lesiones producidas por arma de fuego. Hasta el momento, aunque se han hechos esfuerzos importantes para el esclarecimiento del caso, no ha sido posible identificar un testigo o algún indicio, que nos pueda servir para identificar a los posibles autores.
- JOSE CONCEPCION CARIAS En fecha 17 de marzo del año 2010, se realizó levantamiento cadavérico en el lugar denominado Aldea Carbonales en el Municipio de Bonito Oriental de este ciudadano. Causa de la muerte: Lesiones producidas por arma de fuego. Hasta el momento, aunque se han hechos esfuerzos importantes para el esclarecimiento del caso, no ha sido posible identificaron testigo o alguna indicio, que nos pueda servir para identificar a los posibles autores
- MIGUEL ALONSO OLIVA: Se hizo una búsqueda exhaustiva, en nuestras bases de datos y en los libros de registros, del Departamento de Delitos contra la Vida del Departamento de Colon, no encontrándose ninguna persona fallecida que responda a ese nombre.
- JOSE LEONEL GUERRA ALVAREZ: El homicidio de esta persona sucedió en Barrio Los Pinos de Tocoa, Colón, el día 07 de abril del 2010 a las 11:00 hrs. cuando la víctima se trasladaba a su casa de habitación a la de su madre, y justo cuando llegaba hasta el portón, fue interceptado por un sujeto desconocido quien le disparó en varias ocasiones. Posteriormente el sospechoso abordó una motocicleta de color rojo, que era conducida por su cómplice. La víctima falleció cuando era trasladado a un centro asistencial, se logro identificar dos testigos presenciales, que relataron la dinámica de los hechos. Se logro elaborar un retrato hablado del autor material del hecho, pero hasta el momento, no se ha podido establecer su identidad.

La hipótesis más fuerte hasta el momento, es que el occiso había incumplido el pago de deudas en concepto de drogas, ya que presuntamente, se dedicaba a esa actividad ilícita.

Las víctimas eran Guardias de Seguridad de la Empresa Agropalmas, su homicidio se produjo cuando un grupo de campesinos portando armas de fuego, allanaron y posteriormente usurparon las propiedades de las empresas antes mencionadas. El médico forense estableció como causa de la muerte para ambos, laceración cerebral producida por proyectil disparado por arma de fuego

Durante esta acción fue herido uno de los campesinos y como represalia el Grupo Campesino les dio muerte a ambos guardias.

Por las circunstancias en que se dio el hecho, no ha sido posible hasta el momento, individualizar al o los presuntos autores del hecho.

Ildebran Javier Cardona Ocampo: Casado, originario de la aldea de El Chapagua.

Marvin Celin Padilla Tablada: 45 años de edad, con tarjeta de Identidad No. 0201-1965-00009, casado, originario y residente en la Aldea Los Tarros.

Hector Acosta Antino: Se realizó su levantamiento cadavérico en fecha 16 de marzo del 2010, en el Hospital San Isidro de Tocoa, Colón quien fue muerto al momento en que, un grupo de campesinos portando armas de fuego, allanaron y usurparon tierras de propiedad de la empresa exportadora El Atlántico. El mencionado se desempeñaba como Guardia de Seguridad de la Empresa de Seguridad Orion. La causa de la muerte fue herida penetrante en la región temporal izquierda, con fractura de hueso producida por arma de fuego.

Edwin Merlin Coca Rimerio: hondureño con número de Identidad 1409-1984-00142, residente en la comunidad de Bonito Oriental.

Olvin Renan Ponce Rivera: Hondureño, soltero de 29 años de edad. Causa de muerte: Trauma encéfalo-craneano producida por arma de fuego.

Ambos guardias de seguridad fueron ultimados en fecha 15 de febrero del 2010, mientras realizaban labores de vigilancia en plantaciones de palma africana de la finca La Aurora ubicadas en el sector de la laguna Cacho buey, propiedad de la empresa, Exportadora del Atlántico S.A., donde fueron emboscados por supuestos miembros de grupos campesinos que pretenden allanar estas tierras.

Otros Eventos

Tentativa de Homicidio

El día 12 de febrero del 2010, la Jefatura Departamental de Tocoa reportó que en la finca de palma africana Concepción, propiedad de la Exportadora Atlántico fue objeto de Tentativa de Homicidio el Sr. Margarito Peralta de 54 años de edad, campesino, en enfrentamiento con guardias de la empresa, resultando con tres heridas, por lo que fue trasladado a un centro de asistencia médica.

Incendio

El día 02 de marzo del 2010, se reporto de parte de la Jefatura Municipal de Tocoa, Colon, la realización de la inspección de incendio en la Empresa Exportadora Atlántico, que se ubica en la aldea de Quebrada de Arena, donde se quemaron las bodegas de esa empresa, mismas que albergaban combustibles y otros químicos.

Resultado de las investigaciones y procesos judiciales realizados por el Gobierno:

Sobre esta interrogante a continuación proporcionamos los avances de las investigaciones realizadas en torno a los hechos denunciados que a prima fase revisten de veracidad, y que por el grado de complejidad todos se encuentran en Proceso de Investigación y asimismo recomendamos solicitar información al Ministerio Público sobre si existe algún proceso Judicial en torno a este conflicto, en virtud que el ejercicio de la acción Penal Pública según la Ley adjetiva Penal le corresponde a esa Institución del Estado, y además en el ejercicio de sus atribuciones legales goza de completa independencia funcional; lo anterior a fin de contar con mayor información para elaborar una mejor respuesta de Estado.

Avances Investigativos a la fecha

Identificación del Caso

Oficio No. TC-076-2010.

Delito: Homicidio.

Victima: José Leonel Guerra Álvarez.

Sospechosos: dos desconocidos.

Lugar de los hechos: Bo. Los Pinos, Tocoa, Colón.

Fecha de los hechos: Abril 07, 2010.

Hora en que ocurrió los hechos 11:00 hrs.

Breve reseña de los hechos:

La víctima había salido de su casa de habitación rumbo a casa de su madre, quien vive a pocos metros de la casa del hoy occiso, y justo cuando llegaba hasta el portón fue interceptada por sujeto desconocido quien le disparó en varias ocasiones. Luego de esto, el sospechoso abordó una motocicleta de color rojo, en la cual lo esperaba otro sujeto, yéndose con rumbo desconocido. La víctima falleció cuando era trasladada a centro asistencial.

Diligencias realizadas:

Se entrevistó dos personas, ambas fueron testigos presenciales del hecho delictivo, sin embargo a pesar que relatan la dinámica de los hechos, no logran identificar a ninguno de los sospechosos, pues ambos les resultaron desconocidos. Por lo anterior se solicitó la ayuda de un experto en retrato hablado, quien elaboró retrato del sospechoso que disparó contra la víctima. Hasta la fecha no se han logrado mayores avances en la investigación del presente caso.

Observaciones

En el Bo. Pinos, donde residía la víctima, se rumora que dicha muerte se debió a que el hoy occiso había incumplido con el pago de dinero a un proveedor de drogas, ya que supuestamente éste se dedicaba a la venta al menudeo de cocaína. Lo anterior ha resultado infructuoso documentarlo mediante declaraciones, ya que los informantes argumentan temer a represalias.

Según uno de los testigos, desde hace aproximadamente dos meses-- al grupo campesino que estuvo usurpando plantaciones de palma africana en la Finca La Confianza, en este sector del Bajo Aguan, y propiedad de Exportadora del Atlántico, ya que dirigentes campesinos les habían dicho que terrenos para donárselos.

Retrato hablado de posible sospechoso que disparó contra José Leonel Guerra el cual fue elaborado el día 22 de abril de 2010.

Sobre reconocimientos cadavéricos de guardias de seguridad de la empresa exportada del Atlántico, se detalla lo siguiente:

Levantamiento No. 1:

Victima: José Arnaldo Contreras Valladares, hondureño, con número de identidad 0210-2002-00169, guardia de seguridad de la empresa Exportadora del Atlántico S.A.

Quien fue ultimado en fecha 14 de enero del 2010, mientras desempeñaba sus labores junto a otros compañeros como guardias de seguridad en la finca la confianza sector del municipio de Tocoa, Colon, la cual había sido recién recuperada de usurpadores, cuando

fueron sorprendidos por supuestos usurpadores quienes disparando contra los guardias de seguridad que custodiaban la finca sembrada de palma africana. En este problema también resultaron heridos los guardias José Santos Cárcamo, de 53 años de edad, Gustavo Lara Hernández, de 28 años de edad, y José Gustavo Pineda, quienes fueron emboscados cuando a bordo de un vehículo pretendían auxiliar al grupo de guardias al que pertenecía el fallecido José Arnaldo Contreras.

Levantamiento # 2

Victimas:

Edwin Merlin Coca Romero, hondureño con número de identidad 1409-1984-00142,

Olvin Renan Ponce Rivera, hondureño, soltero de 29 años de edad.

Ambos guardias de seguridad fueron ultimados en fecha 15 de febrero del 2010, mientras realizaban labores de vigilancia en plantaciones de palma africana de la finca La Aurora ubicadas en el sector de la laguna cacho buey, propiedad de la empresa, Exportadora del Atlántico S.A., donde fueron emboscados por supuestos invasores que pretenden recuperar dichas tierras de ese sector.

Levantamiento # 3

También se realizo levantamiento cadavérico en el Hospital San Isidro Tocoa, Colon, de Hector Acosta Andino, hondureño, con número de identidad 0208-1983-00158 quien también fue víctima del ataque dado el día lunes 15 de abril de 2010 el cual estaba desaparecido y encontrado por los familiares al día siguiente en quienes lo trasladaron hacia el hospital.

Observaciones

Las cuatro víctimas eran guardias de seguridad empresa Exportadora del Atlántico S.A..

Se tiene identificado a dirigentes campesinos que lideraban las usurpaciones de las fincas donde ocurrieron las muertes de estos guardias de seguridad, como los autores intelectuales de las mismas. Ya que difícilmente se puede identificar plenamente los autores materiales, pues estos actuaban premeditadamente y con ventaja, amparados en la oscuridad de la noche.

Las demás víctimas de las cuales se solicita información han sido investigadas por la Oficina Municipal de Trujillo, Colón.

Cualquier compensación atribuida

El Estado de Honduras por medio del Poder Ejecutivo con el propósito de solucionar dicho conflicto a fin de Alcanzar una verdadera reconciliación social, sensibilización humana y un genuino Estado de Derecho en Honduras, creo la Operación “Asegurando el Estado de Derecho”, realizada por la Policía Nacional y Fuerzas del Orden Publico de Tarea Conjunta I “Xatruch” en la zona del Bajo Aguán, Departamento de Colón.

La cual se ejecuto con estricto respeto a los Derechos Humanos; por lo que esta Secretaria de Estado en el Despacho de Seguridad en la dirección y administración de la Policía Nacional, Institución encargada de velar por la conservación del Orden Publico, la prevención, control y combate del delito; y proteger la seguridad de las personas y sus bienes, pone a su disposición el siguiente informe de los resultados de la operación antes referida, en el cual se detalla información compensatoria en torno a este conflicto.

Situación

General

Desde el inicio de la Reforma Agraria en Honduras, en los años 70, los campesinos del departamento de Colón se organizaron para reclamar su derecho de acceso a la tierra, con resultados que, según los expertos, debían traducirse en beneficios permanentes para los involucrados.

Sin embargo, en 1993, y por diversas razones, decidieron vender a inversionistas privados las cincuenta y cuatro (54) fincas que formaban la Cooperativa COAPALMA.

En 2001 se forma el Movimiento Unificado Campesino del Aguán (MUCA), con el objetivo de solicitar las tierras del Aguán una vez que se venciera la concesión a los empresarios privados en 2005. Sin embargo, al llegar el mes de diciembre de 2009, deciden tomar por la fuerza las fincas que reclaman, originando el conflicto actual.

Particular

El 7 de diciembre de 2009 inicia la invasión de 26 fincas de palma africana, de propiedad privada, por parte del Movimiento Unificado Campesino del Aguán (MUCA), con la toma de 30 hectáreas de la finca “La Norteña”.

Dado que los dirigentes del MUCA, los representantes de las empresas propietarias de las fincas tomadas (AGROPALMA, ACEYDESA y Exportadora del Atlántico) y los negociadores del Gobierno Central no llegan a un acuerdo para la solución del conflicto, la situación se agrava y crecen las amenazas a la paz social, a la vida humana, a la propiedad pública y privada, al mantenimiento del orden público y al Estado de Derecho.

Según informes (no comprobados) los campesinos que han ocupado las fincas están armados y en condiciones de usar las armas.

El conflicto ha producido inseguridad, afectado la actividad económica de la zona y puesto en peligro el Estado de Derecho.

Cronología de eventos

Incidentes más destacados que hacen obligatoria la intervención del Ministerio de Seguridad para restaurar el orden público y garantizar el legalidad en la zona.

No.	Descripción	Cantidad	Observaciones
1	Fincas tomadas	26	14,206 Has.
2	Muertos confirmados	11	5 Guardias, 1 menor, 1 empleado de ACEYDESA Y 3 campesinos participantes en la ocupación
3	Heridos por arma de fuego	7	4 Policías 1 soldado 2 guardias de seguridad
4	Violación y robo en perjuicio de una mujer	1	1 sospechoso identificado
5	Vehículos dañados por arma de fuego	6	2 vehículos policiales 1 vehículo militar

3 particulares

6	Fincas quemadas	1	12 millones en pérdidas
7	Bodegas quemadas	1	16 millones en pérdidas
8	Enfrentamiento entre invasores y seguridad o fuerzas del orden	5	
9	Vehículos particulares robados	1	El cual fue destruido en accidente vial de invasores
10	Robo de armas y municiones	13	12 armas de empresas de seguridad
			1 pistola policial
11	Robo de radio portátil de comunicación	1	Radio policial
12	Robo de frutas de palma	?	Indeterminado

Descripción de los hechos

1) El 26DIC09 un niño de 13 años que se transportaba en un camión con un grupo de trabajadores de la empresa Exportadora del Atlántico murió al recibir un impacto de bala de alto calibre. El disparo fue hecho en contra del grupo de empleados por uno de los campesinos que participa en la toma, después de sentirse ofendido cuando los anteriores le llamaron “tacamiche”.

2) El 02ENE010 se enviaron dos (2) informantes a las diferentes plantaciones invadidas los cuales informaron a su regreso que los campesinos han hecho barricadas en todos los accesos a las plantaciones y mantienen seguridad en las principales vías de acceso. Uno de los informantes observó once (11) AK-47, dos (2) escopetas y una pistola en San Esteban y siete (7) AK-47 en el Despartar.

3) El 03ENE010 un guardia de la empresa Orión fue herido de bala mientras se desplazaba en un pickup de la empresa con otros compañeros por las fincas invadidas de la Exportadora del Atlántico. El vehículo quedó perforado por proyectiles de escopeta y fusil.

4. El 04ENE010 los campesinos ocupantes de las fincas se tomaron la plantación de palma africana de Suyapa, sumándose así cuatro (4) plantaciones invadidas con las de Guanchías, Despartar y San Esteban.

5) El 08ENE010 La P.N. participó en el desalojo de campesinos en cuatro (4) fincas de palma africana, pertenecientes a la empresa AGROPALMA de René Morales. En el desalojo, unos 7 campesinos armados con fusiles de cacería y escopetas 12, se enfrentaron a tiros con miembros de la Policía Nacional.

6) El 14ENE010 La P.N. participó en el desalojo de campesinos en dos (2) fincas de palma africana pertenecientes a la empresa Exportadora del Atlántico de Miguel Facussé. Esa misma noche unos 100 campesinos del movimiento MUCA regresaron a retomar las fincas expulsando a los 15 guardias que custodiaban los predios e hiriendo de bala a uno de ellos.

7) El día miércoles 270600ENE010 el movimiento campesino MUCA se tomó nuevamente la finca de Palma Africana Suyapa de AGROPALMA, atacando la seguridad de la empresa y dándole muerte al guardia Aquilino Navarro Martínez robándose varias escopetas.

A las 10:00 horas la PN de Trujillo se hizo presente con veinte (20) efectivos los cuales fueron emboscados, recibiendo en su vehículo, varios impactos de AK-47. En el intercambio de fuego salieron heridos el clase I Isai Antonio Mejia Martínez, el “Cobra” José Modesto Aguirre y el agente de policía Melin Magín López. Por parte de los

campesinos salieron gravemente heridos los ciudadanos Antonio Cruz y Rosendo Paz Reyes y fue detenido y remitido a la D.G.I.C. de Tocoa, Colon el campesino Samuel Mejía Fuentes.

8) El 031300FEB010 una camioneta de particulares fue balaceada por campesinos que participan en las tomas en el sector de la finca Suyapa de AGROPALMA sin ningún herido que lamentar.

9) El 040730FEB010 un grupo de campesinos ocupantes que se desplazaban en un vehículo pick-up doble cabina, (robado) propiedad de la empresa AGROPALMA, se accidentaron en el sector de la finca Suyapa, con el saldo de dos campesinos muertos y el vehículo destruido. Los cuerpos no pudieron ser levantados por las autoridades competentes y fueron entregados por los mismos campesinos a sus familiares.

10) El día domingo 2111:20MARZO2010, arribo a esta ciudad de Tocoa, Colón, los siguientes funcionarios del Gobierno:

- a. Ministro de Agricultura y Ganadería Jacobo Regalado
- b. Designado Presidencial Samuel Reyes
- c. Ministro del INA Cesar Ham,

Quienes se transportaban en un helicóptero color blanco y gris, y que venían a una reunión con los campesinos en el Hotel Sanabria para mediar en el conflicto de las tierras en litigio del Bajo Aguán, finalizando a las 15:45 horas sin novedad.

11) El día 0100:32ABRIL2010 se presentó la Clase I de Policía Isis Amaya con la novedad de que en la salida hacia Sabá, después de la persecución de un vehículo se detuvieron frente a la Finca la Lempira donde desconocidos desde el interior de la misma, dispararon en contra de la Patrulla Policial hiriendo de bala al Policía Manuel de Jesús Guevara Miguel localizada a la altura del antebrazo izquierdo con orificio de salida, quien fue trasladado de inmediato al Hospital San Isidro de esta ciudad de Tocoa, Colón, y en la actualidad se encuentra recuperado.

1. El día martes 13:0430ABRIL2010 reportó el Señor Tábor de 35 años de edad, casado, hondureño, originario de san Pedro Sula, quien labora para la compañía de limpieza de servicios sanitarios portátil Monsol que aproximadamente a las 04:30 am del mismo día en la carretera que de Tocoa conduce a Sabá a la altura de la Cooperativa Lempira sufrió un atentado por parte de individuos desconocidos, quienes le hicieron aproximadamente 8

2. disparos con arma de fuego calibre desconocido los que impactaron en el vehículo marca Isuzu tipo cisterna, color blanco, placa PCR5182, propiedad de la compañía antes mencionada los disparos solo causaron abolladuras en el tanque de cisterna.

3. El día 1413:35ABRI2010, se presentó el Sr. Ministro de Defensa Don Marlon Pascua Cerrato acompañado por el Comandante del ejercito General de Brigada Carlos Espinoza Urquía, Comandante de la Fuerza Aérea Marcos Castillo Director de Organizaciones y Operaciones y Adiestramiento Gral. de Brigada Bartolomé Fúnez Castellón, Jefe del Estado Mayor de la Fuerza Naval.

4. El día 1415:40ABRIL2010, se presentó el Policía Clase I Santos Miguel Gómez Policía Juan Benítez, Raúl Pérez, Joel Vásquez, Javier Ulloa, con la novedad de traer aprehendido al Sr. de nombre Coronado Ávila Munguía casado, hondureño, labrador, originario y residente en Tocoa, Colón, Motivo: Tener orden de captura pendiente por el Juzgado de Letras Seccional de Trujillo, Colón, emitida el 11 de junio del 2009 por suponerlo responsable del delito de Usurpación de Tierras propiedad de la Empresa Exportadora del Atlántico, posteriormente fue remitido a la Oficina de la D.N.I.C de esta ciudad de Tocoa, Colón.

5. El día viernes 1611:45ABRIL2010 arribo a esta ciudad de Tocoa, Colón, a la Jefatura Departamental No. 2, el Sr. Ministro de Seguridad Lic. Oscar Álvarez Guerrero acompañado del Vice Ministro de Seguridad Ing. Armando Calidonio, Director Gral. de la Policía Nacional Gral. Director don José Luis Muñoz Licona también el Portavoz de la Secretaria de Seguridad Comisario de Policía Don José Leonel Saucedo.

7. El día sábado 1713:30ABRIL2010, arribo en un helicóptero con serie N407GL el Señor Presidente de la República don Porfirio Lobo Sosa la cual se encuentra ubicada en el Municipio de Bonito Oriental, acompañado del Sr. Ministro de Soptravi Miguel Pastor, Ministro de Defensa Lic. Marlon Pascual Serrato, Ministro de INA Cesar Han, saliendo de la propiedad antes en mención a las 14:45 horas al sector de Trujillo, Colón a una reunión con campesinos de MUCA firmando el acuerdo de cesión de Tierras.

8. El día miércoles 2409:35ABRIL2010 en la Residencial Monserrat aterrizo el helicóptero marca Bell 2001 con registro ARAUM piloteado por el Capitán Julio Oseguera, trayendo al Designado Presidencial Ing. Samuel Reyes el Ministro del INA Cesar Han, y de Agricultura y Ganadería Ing. Juan Ártica, quienes vienen a una reunión al Hotel Sanabria, los que fueron transportados en el vehículo del Sr. Juan Gómez, se llevó a cabo la reunión en la Sala de Conferencias del Hotel Sanabria a puerta cerrada, con el Director Regional del INA de Tocoa, Colón, Sr. Coronado Ávila y los representantes del MUCA, Lic. Josefa Escoto, Elsy Banegas, (COPA) el representante Legal de los campesinos Antonio Trejo, finalizando a las 13:10 horas y llegaron a un acuerdo propuesto por el Gobierno y aceptado por los campesinos.

9. El día 2610:00ABRIL2010 en la Oficina del Señor Jefe Departamental de la Policía Nacional se realizó una reunión con los Representantes de la Corporación DINAN referido a la continuación:

Las personas antes descritas le hicieron referencia a los puntos específicos tratados en la reunión del día 22 de abril que se celebró con el Director del INA Sr. Cesar Han representante del MUCA Policía Nacional y Fuerzas Armadas en las Instalaciones de la Regional del INA Departamento de Colón.

Los representantes de la Empresa manifestaron su preocupación respecto a los aspectos siguientes:

Los campesinos ya están explotando la fruta del Palma Africana en el terreno que según ellos el Asesor Jurídico son propiedad privada y están acreditadas legalmente y que no habido ningún acuerdo de compra-venta con el Gobierno.

Se reactivaron a través del Ministerio Publico las órdenes de Desalojo de las fincas arriba indicadas a excepción de las fincas Marañones y la Isla No. 2, que se encuentran en la margen izquierda del Río Aguán.

Manifestaron que esperan contar con el apoyo de la Policía Nacional para ejecutar los Desalojos y efectuar el comiso de las frutas extraídas de las fincas que según ellos están siendo extraídas ilegalmente.

Las Fincas San Isidro, Despertar y Trinidad todavía se encuentran ocupadas por el Movimiento Campesino del Aguan.

NOTA: para efectos de poder tener una comunicación directa con el Representante del INA y MUCA se adjuntan los números de teléfonos Director del INA Cesar Han 95851242, Director Regional del INA Coronado Ávila No. 98498165- 99896642.

10. El día 0114:00MAYO2010, aterrizo en el área verde el Helicóptero matrícula HRSU color blanco y negro, piloteado por el Capitán retirado de Aviación Nel Matute, en donde se transportaba el Sr. Director del SAG. Secretario de Seguridad de Agricultura y Ganadería

Ing. Jacobo Regalado, Ing. Geovany Pérez Director de Ciencias Agropecuarias y Tecnología quienes vienen a una reunión al Restaurante Mauras de esta ciudad de Tocoa, Colón, con la ONG. COPUNATUN, Campesinos de la Colonia Guadalupe Carne y, Vallecito y Sico Paulaya, finalizando a las 16:00 horas

12. El 100600MAYO2010 se procedió a practicar un desalojo en el bien inmueble situado en el Bajo Aguan, jurisdicción de Tocoa, Departamento de Colón, una área de setecientos ochenta y cuatro (784) hectáreas con los siguientes límites y colindancias al Norte con la Laguna de Cacho buey, al Sur con carretera Toronjal Tocoa -Corocito, al Este terreno de la Cooperativa Norteña Limitada, terrenos propiedad de la Empresa Exportadora del Atlántico, los cuales estaban tomados por un grupo de campesinos de aproximadamente sesenta (60) personas, quienes fueron desalojados pacíficamente, posteriormente se procedió a consolidar el objetivo mediante patrullajes realizados por equipos de patrulla Policial Militar, finalizando el desalojo a las 10:30 horas A.M., entregándole los predios a la Seguridad Privada de la Empresa Exportadora del Atlántico y dejando en apoyo a la Seguridad diez (10) Policías y veinte (20) miembros del Ejército al mando de dos (2) Oficiales uno por cada institución.

13. El 110600MAY010, dio inicio el desalojo de las Fincas, San Esteban, Trinidad, y Despertar.

portaba un arma de fuego, tipo fusil, calibre 22, marca REMINGTON, sin serie, el cual fue puesto a la orden de la DNIC, de Trujillo, Colón, por el delito de portación Ilegal de Arma, en dicha fincas se encontraba un total de ciento un personas, las cuales fueron desalojadas de forma pacífica, finalizando a las 11:00 horas, entregándole los predios a la Seguridad Privada de la Empresa Agropalma, propiedad del Señor René Morales y dejando en apoyo a la seguridad diez Policías y diez Soldados de las Fuerzas Armadas al mando de dos Oficiales, uno por cada Institución.

14. El día martes 1109:30MAYO2010, inicio una marcha pacífica por miembros del grupo campesinos de la Cooperativa San Isidro compuesta por aproximadamente 100 personas, cuya finalidad es protestar por los Desalojos realizados en ese sector, quienes se apostaron frente a las Oficinas de los Tribunales de Justicia.

INCIDENCIA COMPARATIVA DEL MES DE MARZO Y ABRIL AÑO 2010

No.	INCIDENCIA	MARZO	ABRIL
1	Muertos por Arma de Fuego	30	13
2	Muertos por Arma Blanca	3	2
3	Muertos por Accidente de Tto.	1	
4	Lesionados por Arma de Fuego	9	3
5	Lesionado por arma blanca	1	
6	Lesionado por Accidente de Tto.	1	5
7	Robo a Personas	2	1
8	Robo a Empresas y Negocios		
9	Robo a Residencias		
10	Rapto		
11	Armas decomisadas	16	40
12	Detenidos por Escándalo Público	56	185
13	Motocicletas Decomisadas	47	138

14	Vehículo decomisados	12	27
15	Licencias Decomisadas	39	479
16	Remitido a los Juzgados	2	
17	Orden de Captura Cumplida1	3	
18	Portación Ilegal de Arma	1	3
19	Remitidos a la D.N.I.C.	6	29
20	Droga decomisada	60 Libras 41 Gramos	
21	Armas remitidas a la D.N.I.C.	2	7

15. El 121500MAYO10, fue liberada la Sra. Marla Elizabeth Castro Lanza de 47 años de edad, hondureña, originaria de La Ceiba Atlántida, residente en la Col. Sutrafcó, de La Ceiba, Atlántida, quien fue secuestrada el 07 de mayo de 2010, frente a su casa de habitación, en el lugar que fue liberada se encontró un arma ametralladora, Uzi 9mm.

16. El 131130MAYO2010, En el Municipio de Balfate, Colón, fue reconocido el cadáver del Policía Wilfredo Castillo López, asignado al Grupo Especial Antisecuestro (GEAS), quien falleció por asfixia por sumersión, dicho Policía falleció al caer accidentalmente en la Barra del Río Bejucales, cuando iba en persecución del individuo Gabriel Alvarenga, supuesto secuestrador de la Sra. Marla Elizabeth Castro Lanza.

17. El 161310MAYO2010, Arribaron a la ciudad de Tocoa vía aérea en el Helicóptero, color gris y blanco, marca Belt L4, matrícula HRASUM, el Sr. Tito Asfura, el Sr. Ricardo Álvarez, a una reunión Política con el Sr. Oscar Nájera y el Sr. Alcalde del municipio de Tocoa.

18. El 161315MAYO2010, Arribaron a la ciudad de Tocoa vía aérea en el Helicóptero, color blanco y negro, marca Belt 407, matrícula TGDZ0, el Sr. Secretario de SOPTRAVI, Licenciado Rodrigo Miguel Pastor, quien llegó a supervisar el dragado del Río Aguán.

19. El 181600MAYO2010, fueron retiradas las tropas de las Fuerzas Armadas de la Operación Asegurando el Estado de Derecho “XATRUCH”, continuando con la Operación la Policía Nacional.

20. El 211410MAYO10, a las 14:10 horas salieron de la Jefatura Departamental # 2 , hacia la colonia la Esperanza de Tocoa Colon; el sub Oficial de Policía en Investigación, ELVIN RAMOS, al mando de 4 policías en investigación y 8 Policías Preventivos, a realizar la captura de un individuo; quien es prófugo del centro Penal de Trujillo Colon, este al ver la presencia de los Policías disparo contra ellos, hiriendo un Policía quien al verse herido repelo el ataque logrando herir al agresor; los herido fueron trasladados al Hospital San Isidro de esta ciudad donde fueron atendidos por una Doctora..

El Policía según dictamen médico presenta

- 1) Una herida de arma de fuego en el muslo Izquierdo y Derecho, ambos con sospecha de lesión vascular.
- 2) Fractura expuesta de radio y cubito miembro superior Izquierdo.

El Policía Castillo fue trasladado vía aérea a una clínica de San Pedro Sula, quien falleció cuando era ingresado a la clínica Murillo..

- 1) Herida de arma de fuego penetrante en abdomen
- 2) Fractura expuesta con minuta en área radial mano derecha
- 3) Herida en el antebrazo izquierdo.

Cesar Augusto Sánder Rodríguez fue trasladado al hospital Atlántida de la Ceiba, en una Ambulancia del cuerpo de Bomberos, decomisándole un arma de fuego tipo fusil, calibre 2.23 con la cual hirió al Policía.

c. En este caso fueron detenidos dos señores

21. 261200MAYO2010, por instrucciones del Señor Director General de la Policía Nacional, General Director Don José Luis Muñoz Licona, se dio por finalizada la Operación Asegurando el Estado de Derecho, por la Fuerza de Tarea Conjunta “XATRUCH” en el Departamento de Colón.

Observaciones

1. El día 160700ABR2010, en la Calle Principal de Jericó de Trujillo, Colón, se tomó nota de un accidente de tránsito tipo volcamiento, con daños materiales, en el que participó el vehículo tipo camión, marca Estallión color verde año 2008, propiedad de las Fuerzas Armadas, y asignado temporalmente a la Policía Nacional, conducido por el Soldado Luis Alonso Reyes Velásquez, causa principal del accidente: conducir el vehículo ingerido de bebidas alcohólicas.

2. El día 171930ABR2010, Se tomó nota El 171930ABR010 se tomó nota de un accidente tipo atropello con semoviente y daños materiales, en la carretera que del desvió a Braulio conduce a Sonaguera, Colón, a la altura de la Colonia Vindel, aldea el Progreso; vehículo participante tipo Pick up color azul y Blanco, marca Toyota, sin registro, propiedad de la Policía Nacional, asignada a la Policía de Frontera y conducida por el Policía clase I JOSUE MANUEL QUINTANILLA, de 32 años, casado, Hondureño, Perito Mercantil y Contador Público, y asignado a la Policía de Frontera.

5. El 050500JUNIO2010, en la Finca Despertad Agro Palma, ubicada en la margen izquierda, jurisdicción del municipio de Trujillo, Colón, se tomó nota de un cadáver de nombre José Antonio Muñoz García, de 40 años, Policía Preventivo, perteneciente a la Jefatura Departamental No. 16 y se encontraba en misión en Tocoa, Colón, originario de La Ceiba y residente en Santa Bárbara, quien falleció a consecuencia de una herida de arma de fuego calibre desconocido, localizada en el cráneo; asimismo, surgió lesionado Rigoberto Alvarado Oliva, de 22 años, Policía Preventivo, perteneciente a la Jefatura Departamental No. 16, y se encuentra en misión en Tocoa, Colón, originario del Departamento de La Paz y residente en Santa Bárbara, quien presenta una herida superficial de bala, calibre desconocido, localizada en el lado derecho del cráneo, supuestamente los hechos fueron un grupo de campesinos, quienes les hicieron una emboscada, al momento que prestaban una vigilancia en la Finca antes en mención.

Conclusiones

1. Se puede concluir que la operación fue un éxito ya que se logró el objetivo principal del Señor Presidente Constitucional, que era lograr la firma del convenio entre el movimiento unificado campesino del Aguan (MUCA) y el Gobierno.

2. Se proyectó una imagen positiva de la Policía Nacional en el ámbito nacional e internacional al actuar dentro del marco de la ley y con el irrestricto respeto a los Derechos Humanos.

3. Se demostró la capacidad de respuesta de la Policía Nacional para controlar cualquier área geográfica del país transmitiéndole a la población la sensación real de seguridad y la capacidad de servicio por parte de la Institución.

4. Se logró reducir al cero por ciento (0 %) la narco actividad en la zona.

5. Se logró minimizar la delincuencia común.

6. Se puso a prueba el nivel de apresto operacional de las Jefaturas Departamentales involucradas en la operación.

7. Se logró establecer excelentes relaciones con las autoridades locales y con los líderes de la sociedad civil del área.

México: asesinato de la Sra. Marisela Escobedo Ortiz, defensora de los derechos humanos.

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 1 mujer

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial El Relatora Especial lamenta la falta de cooperación del Gobierno de México con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Llamamiento urgente con fecha 28 de diciembre de 2011, enviado junto con el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión; la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias; y la Relatora Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido 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.

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.

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.

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.

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.

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.

Se expresa 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 expresa 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.

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

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

Además, nos permitimos hacer un llamamiento urgente al Gobierno de su Excelencia para que adopte las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

Nos gustaría referirnos también a la Resolución 8/3 del Consejo de Derechos Humanos sobre las ejecuciones extrajudiciales, sumarias o arbitrarias que "[r]eitera la obligación que incumbe a todos los Estados de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables, velando al mismo tiempo por el derecho de toda persona a un juicio imparcial y público ante un tribunal competente, independiente e imparcial establecido por la ley, de dar una indemnización adecuada, dentro de un plazo razonable, a las víctimas o a sus familiares y de adoptar todas las

medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias” (A/HRC/RES/8/3, párrafo 4, reiterando la resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, quisiéramos recordar el principio 4 que obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 que prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias.”

Asimismo, quisiéramos llevar a la atención del Gobierno de su Excelencia el Artículo 7 (c) de la Convención sobre la Eliminación de Todas las Formas de Discriminación Contra la Mujer, el cual establece que Los Estados Partes tomarán todas las medidas apropiadas para eliminar la discriminación contra la mujer en la vida política y pública del país y, en particular, garantizarán a las mujeres, en igualdad de condiciones con los hombres, el derecho a participar en organizaciones y en asociaciones no gubernamentales que se ocupen de la vida pública y política del país. En ese sentido, hacemos referencia al Artículo 4 (o & p) de la Declaración de las Naciones Unidas sobre la Eliminación de la Violencia Contra la Mujer, el cual afirma que los Estados deben reconocer el importante papel que desempeñan en todo el mundo el movimiento en pro de la mujer y las organizaciones no gubernamentales en la tarea de despertar la conciencia acerca del problema de la violencia contra la mujer y aliviar dicho problema; y deben además promover la labor del movimiento en pro de la mujer y las organizaciones no gubernamentales, y cooperar con ellos en los planos local, nacional y regional.

Quisiéramos llevar a la atención del Gobierno de su Excelencia el Artículo 4 (c & d) de la Declaración de las Naciones Unidas sobre la Eliminación de la Violencia contra la Mujer, el cual afirma la responsabilidad de los Estados de proceder con la debida diligencia a fin de prevenir, investigar y, conforme a la legislación nacional, castigar todo acto de violencia contra la mujer, ya se trate de actos perpetrados por el Estado o por particulares. Con este fin, los estados deben establecer, en la legislación nacional, sanciones penales, civiles, laborales y administrativas, para castigar y reparar los agravios infligidos a las mujeres que sean objeto de violencia; debe darse a éstas acceso a los mecanismos de la justicia y, con arreglo a lo dispuesto en la legislación nacional, a un resarcimiento justo y eficaz por el daño que hayan padecido; los Estados deben además informar a las mujeres de sus derechos a pedir reparación por medio de esos mecanismos.

Finalmente, consideramos relevante hacer referencia a las recomendaciones emitidas por la Relatora Especial sobre violencia contra las mujeres tras su visita a México en febrero de 2005, las cuales instan al Estado mexicano a poner fin a la impunidad respecto de la violencia contra la mujer llevando a cabo reformas de la legislación, los procedimientos de investigación y el sector judicial; a identificar y encauzar de manera transparente a todos los autores de asesinatos de mujeres o actos de violencia contra la mujer en el estado de Chihuahua; a prestar servicios de protección y apoyo a las víctimas de la violencia o a sus familias, así como a las mujeres que corren el riesgo de sufrir actos de violencia; a crear una base de información y conocimientos que tenga en cuenta las cuestiones de género; a fortalecer las infraestructuras institucionales y a promover programas operacionales, de capacitación y de sensibilización.

Quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y las libertades de la persona mencionada e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

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

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.
3. Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/ perpetradores?
4. Tras los hechos ocurridos, por favor, sírvanse indicar qué medidas se van a adoptar para garantizar la protección de los miembros de la familia de la Sra. Marisela Escobedo Ortiz.
5. Por favor, indiquen si se ha proporcionado o se va a proporcionar compensación a la familia de la víctima.
6. Por favor, sírvase proporcionar información detallada sobre las acciones realizadas para erradicar el problema de violencia contra las mujeres en el Estado de Chihuahua, en particular aquellas encaminadas a dar cumplimiento a la sentencia de la Corte Interamericana de Derechos Humanos en el caso de femicidio conocido como “Campo Algodonero”, dictada el 10 de diciembre de 2009.

India

Killing of civilians by military and police forces in Jammu and Kashmir

Violation alleged: Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law

Subject(s) of appeal: Group concern

Character of reply: Acknowledgement

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response from the Government of India on the concerns raised.

Allegation letter dated 22 October 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to bring to your Excellency’s Government’s attention information concerning **the killing of civilians** by military and police forces in Jammu and Kashmir. We would also like to bring your attention 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.

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.

“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”.

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.

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).

We have appended an annex to this communication summarizing alleged killings that occurred between 11 June and 8 August 2010. We would like to seek from your Excellency’s 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. We 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.

While we do not wish to prejudge the accuracy of these allegations we would like to request your Excellency’s Government to seek clarification on the circumstances regarding these deaths.

In terms of international law your Excellency’s Government has the obligation under the International Covenant on Civil and Political Rights (“ICCPR”), to ensure that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). In its General Comment on article 6, the Human Rights Committee has observed “that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”

Some of the violations allegedly committed were committed in the context of armed conflict and as such, both international humanitarian law, as well as human rights law, is applicable. Yet other violations were allegedly committed outside of the context of armed conflict, and as such only human rights law is applicable to such instances. Accordingly, rules regarding military operations, such as the principles of necessity, proportionality and distinction, as are applicable to this case, only apply in the context of armed conflict. In the case at hand, these international rules are relied upon to determine the lawfulness of the Indian Forces alleged “encounter killing” policy.

With regard to allegations of “encounter killings” we would like to bring to the attention of your Excellency’s Government Articles 48, 51(2) and 52(2) of Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (8 June 1977); and Article 13(2) of Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (8 June 1977). These provisions codify the principle of distinction under international humanitarian law. This principles have also consistently been applied as a principle of customary international law (see for example the *Legality of the Threat or Use of Nuclear Weapons*, ICJ, Advisory Opinion, (1996) ICJ Rep 226 (08 July 1996)). In essence this principle provides that the parties to a conflict must at all times distinguish between civilians and combatants/direct participants in hostilities, and attacks may be directed only at military objectives, defined as those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. The only circumstance in which civilians may be targeted is for such time as they take a direct part in hostilities.

We recognize that your Excellency’s Government had to take measures to restore public order. However, the adoption of any such measures have to strictly comply with the international human rights obligations which your Excellency’s Government has undertaken, which require 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. We would note the relevance in these cases of the UN Basic Principles on the Use of Force and Firearms by Law Officials (Basic Principles) which provides that intentional lethal use of firearms may only be made when strictly unavoidable (Para. 9). Additionally, principle 4 provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, principle 5 provides that, “[w]henver the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment [...]” Besides, article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

With regard to policing of unlawful assemblies, the Basic Principles on the Use of Firearms by Law Enforcement Officials under principle 13 provides that “In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary”. We are concerned with the reports that security forces resorted to use of force without provocation from the victims.

We urge your Excellency’s Government in line with principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions to conduct a “thorough, prompt and impartial investigation of all suspected cases of extra-

legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

With regard to allegations that journalists and human rights defenders are being targeted by authorities to prevent them from carrying out their work, we would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the 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.”

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

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

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

- article 9, para.3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

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

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned journalists and human rights defenders are respected and that the accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

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

Are the facts alleged in the above and appended summaries of the cases accurate?

Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the above incidents (including those listed in the attached Annex). Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the alleged killings listed in the attached Annex.

Please state whether any compensation was, or is intended to be, provided to the families of persons killed by the security forces in the course of the incidents alleged here.

Please indicate what measures have been adopted by your Excellency's Government to regulate the use of force by law enforcement officials. How did the security forces ensure compliance with the requirements of necessity and proportionality?

Please provide information on the number of persons killed in "encounter killings" and provide information on measures being taken to comply with the principle of distinction.

Please provide information regarding allegations that journalists and human rights defenders are being targeted by the authorities, including by the indiscriminate use of the Public and Safety Act, 1978, in order to prevent them from carrying out their work in defense of human rights.

Annex: List of alleged victims of excessive use of force

According to information received, it is alleged that:

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

On 25 July 2010, **Mr Tariq Ahmad Dar**, aged 17 years, a resident of Panzala, Rafiabad, 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

On 2 August 2010, **Mr. Khursheed 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Government response dated 3 December 2010

Please accept my sincere apologies for this delay in acknowledging your letter of 22 October 2010 and would like to assure you that your letter has been forwarded to authorities in India for their due consideration. You are, no doubt, aware of the complexity of the situation that has a strong dimensioning of cross border terrorism and extremism, aimed at challenging the very idea of a secular, liberal and democratic India, also as her modest level of economic development. Equally, you are no doubt, also aware of the Government of India's sensitivities on this issue and her consistent position on the matter.

On the issue of the Armed Forces Special Powers Act, I would like to assure you that the Government of India is seized of all concerns that have been expressed by various quarters, including civil society, and would give due attention to your views.

India: Killing of Mr. Amit Jethwa, a Human Rights Defender

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: 1 male

Character of reply: Acknowledgement

Observations of the Special Rapporteur

The Special Rapporteur welcomes the arrest of the alleged perpetrators and looks forward to receiving a response from the Government of India on the full details of prosecutions to be undertaken.

Allegation letter of 29 July 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the killing of **Mr. Amit Jethwa** who was a Public Interest Law Practitioner and Right to Information Activist.

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.

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.

Concern is expressed that the killing of Mr. Jethwa is related to his work in exposing corruption and denouncing illegal mining.

In connection to the allegations above, we would like to refer your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (article 6). We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons.

We urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in particular Principle 9 to conduct a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions...". This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions". The Special Rapporteur on extrajudicial executions has noted in a report to the Commission on Human Rights that, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.).

Additionally, as Mr. Jethwa may have been killed as a result of his work in exposing corruption and denouncing illegal mining, we would like to remind your Excellency's Government of its obligation 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 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."

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

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

- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

- article 9, para. 3, point a) which establishes that, in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

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

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of individuals working for the protection and realization of human rights and fundamental freedoms are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

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

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

Government reply dated 20 January 2011

The Permanent Mission of India has the honor to inform 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 person who is absconding.

Indonesia

Killings of Mr. Adi Mulyadi, Mr. Roni and Mr. Tarno- religious minorities

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: 2 males (religious minorities)

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 17 February 2011, sent with the Independent Expert on Minority Issues; Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

We would like to draw the attention of your Excellency's Government to concerns regarding the circumstances surrounding the killings on 6 February 2011 of **Mr. Adi Mulyadi, Mr. Roni** and **Mr. Tarno** following an attack in Umbulan village, Cikeusik district, West Java, and issues related to the protection of religious minorities, in particular the Ahmadiyyah community from harassment and attacks.

According to information received

On 6 February 2011, around 10:00 a.m., over 1,000 people reportedly armed with machetes, swords, rocks and spears, stormed the house of a leader from the Ahmadiyyah community in Umbulan village, district Cikeusik, in West Java. Three members of the Ahmadiyyah community, Mr. Adi Mulyadi (24 years old), Mr. Roni (34 years old) and Mr. Tarno (33 years old), were beaten and stoned to death. In addition, Mr. Ferdiaz (30 years old) was stabbed in the back, Mr. Deden Sujana (45 years old) was stabbed in the outer right wrist, Mr. Bebi (45 years old) received a serious injury to his head and Mr. Masihudin was stripped naked and beaten by the attackers in a rice field. Furthermore the attackers are reported to have destroyed the house, as well as vehicles parked around it, and included chants of "Police get out – burn these Ahmadiyyah people". The police, who were close to the house, allegedly did not employ any preventive measures before the violence; on 6 February 2011, around 9:00 a.m., police officers reportedly asked the members of the Ahmadiyyah community to leave their premises and not to fight back if attacked.

The attack of 6 February 2011 in Cikeusik follows an incident, which took place on 5 February 2011, during which the house of the local Ahmadiyyah leader, Mr. Ismail Suparman was attacked in an effort to stop members of the Ahmadiyyah faith from holding worship meetings at the premises.

Furthermore, on 28 January 2011, an Ahmadiyyah congregation was evacuated following an attack on the congregation in the Makassar mosque, in the capital of South Sulawesi. The attack on the mosque, which included destroying property and breaking windows, was reportedly carried out by the group "Islamic Defenders Front".

While the minister for security issued instructions to prevent future conflicts, he is reported to have reminded Ahmadiyyah members of the joint ministerial decree of 9 June 2008. This joint ministerial decree instructs adherents of the Indonesian Ahmadiyyah Congregation, as long as they claim to be Muslims, to stop the spreading of the belief that there is another prophet with his own teachings after the Prophet Muhammad and warns Ahmadiyyah members who disobey this instruction of the joint ministerial decree that they and their associated organizations will face legal action (please refer to the Special Rapporteur's communication of 12 June 2008 and your Excellency's Government's reply of 27 June 2008, A/HRC/10/8/Add.1, paras. 60-68). In addition, the Religious Minister, Mr. Suryadharma Ali, is reported to have said that the process of dissolving the group would be gradual; therefore the process would begin with the enforcement of the joint ministerial decree.

Information received indicates that the number of attacks against the Ahmadiyyah community has increased to serious levels over the past year. The examples below illustrate a number of reported attacks and harassment of the Ahmadiyyah community and the alleged lack of protection afforded to them.

On 27 December 2010, the Ahmadiyyah community's madrasah "Al Mahmud" in Kampung Rawa Ekek Sukadana village, Cianjur, West Java, was burned by a group of unknown people.

On 8 December 2010, following a meeting of Tasikmalaya's district government, the Ahmadiyyah community's public facilities in Tasikmalaya, including mosques, were closed.

On 1 October 2010, mobs attacked the Ahmadiyyah community in Cisalda Bogor, West Java, reportedly burning their mosque and at least 11 homes.

Since July 2010, it has been reported that several attempts have been made by the municipal police and hundreds of people organized by militant Islamist groups to force an Ahmadiyyah mosque in Manis Lor Village, Kuningan regency, West Java, to close. This includes an incident on the 26 July 2010 when the municipal police reportedly tried to close the An Nur mosque in Manis Nur, where some of the local Ahmadis conduct religious services. Another attempt to close the An Nur mosque was made on 28 July 2010, in which police and local government officers tried to seal the mosque. Hundreds of protestors organized by the Islam Defenders Front, the Indonesian Mujahidin Council and the Islamic Community Forum, also attempted to forcibly close the mosque. It is reported that two thirds of the Manis Lor community belong to the Ahmadiyyah faith.

In February 2010, a violent clash reportedly broke out between five members of Islamic groups and members of the Ahmadiyyah community in the Manis Lor village, Kuningan regency, West Java. It is reported that police officers remained passive during the incident. The attack resulted in injury to three people, damage to property and homes, and the closure of a school. Furthermore, it has been reported that there have been attempts to close eight Ahmadiyyah mosques in the village, with written orders alleged to have been issued by the Kuningan regent.

Serious concern has been expressed, that the above cited attacks do not represent isolated cases, but demonstrate the targeting of those belonging to the Ahmadiyyah faith and highlight a lack of protection that is afforded to those belonging to the Ahmadiyyah faith, their right to worship and their places of worship.

While we do not wish to prejudice the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification of the circumstances regarding the killings of Mr. Adi Mulyadi, Mr. Roni and Mr. Tarno and the aforementioned attacks on the Ahmadiyyah community.

We would like to bring to the attention of your Excellency's Government article 6 of the International Covenant on Civil and Political Rights (ICCPR, acceded to on 23 February 2006) which provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". We urge your Excellency's Government in line with principle 9 of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions to conduct "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions". This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible [...] and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

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

In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

Furthermore, with respect to the allegations according to which the police did not employ any preventive measures before the violence and remained passive during the violent clashes, we would like to draw your Excellency's Government's attention to article 2 of the Convention against Torture, which requires the State Party to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Moreover, we would like to draw your Excellency's Government's attention to article 12 of the Convention against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention against Torture, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

We would also like to draw your Excellency's Government's attention to article 14 of the Convention against Torture, which provides that victims of torture should have the right to redress and adequate compensation. In this regard, we would also like to remind you the Human Rights Council, in paragraph 6 (e) of resolution 8/8, urges States "To ensure that

victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation, and in this regard encourages the development of rehabilitation centres for victims of torture.”

We would like to appeal to your Excellency’s Government to ensure the right to freedom of religion or belief of all members of the Ahmadiyyah community 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 ICCPR. In addition, we would like to remind your Excellency’s Government that, according to article 20, paragraph 2, of the ICCPR “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

We would also like to recall that the General Assembly, in its resolution 64/164, urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end “(g) To ensure, in particular, the right of all persons to worship, assemble or teach in connection with a religion or belief and their right to establish and maintain places for these purposes and the right of all persons to write, issue and disseminate relevant publications in these areas; (h) To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration and destruction; (i) To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom of all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected; (j) To ensure that all public officials and civil servants, including members of law enforcement bodies and personnel of detention facilities, the military and educators, in the course of fulfilling their official duties, respect freedom of religion or belief and do not discriminate for reasons based on religion or belief, and that all necessary and appropriate awareness-raising, education or training is provided; (k) To take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to members of religious minorities in all parts of the world”.

We have noted that in the reply letter dated 27 June 2008, your Excellency’s Government indicated that the joint decree KEP-033/A/JA/6/2008 or SKB No. 3/2008 “appeals to the Ahmadiyya followers to return to the Islamic mainstream religion”. In this regard, we would like to reiterate that, apart from the legal courses available against harmful activities, “it is not the business of the State or any other group or community to act as the guardian of people’s consciences and encourage, impose or censure any religious belief or conviction” (see E/CN.4/1997/91, para. 99 and A/HRC/10/8/Add.1, para. 68). Similarly, in its general comment No. 22, the Human Rights Committee stated that “the terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 [of the ICCPR] is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”

Furthermore, we draw the attention of your Excellency’s Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 requires that “States shall protect the

existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity". Article 2 states that "Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. In addition, article 4 of the Declaration states that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".

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

1. Are the facts alleged in the above summary of the cases accurate?
2. Has a complaint been lodged with regard to the incidents mentioned above?

Please provide the details and where available, the results, of any judicial investigation, or any criminal charges and other inquiries carried out in relation to the killings of Mr. Adi Mulyadi, Mr. Roni and Mr. Tarno and the above mentioned attacks on the Ahmadiyyah community.

Please explain how the joint ministerial decree of 9 June 2008 is compatible with applicable international human rights norms and standards as stipulated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Please indicate whether compensation has been provided to the families of Mr. Adi Mulyadi, Mr. Roni and Mr. Tarno and other members of the Ahmadiyyah community who have fallen victim of the above mentioned attacks.

Indonesia: pattern of extrajudicial executions as a result of use of excessive force by the police during riot/ crowd control and when arresting suspected criminals.

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

Subject(s) of appeal: 6 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 22 November 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to bring the attention of your Excellency's Government information we have received concerning allegations of a pattern of extrajudicial executions as a result of use of excessive force by the police during riot/ crowd control and when arresting suspected criminals.

We have received information concerning the events summarized below.

According to information received

On 3 August 2009, Mr. Yawen Wayeni, aged 39, of Matembu village, Serui, Wayemi was arrested by the Police Mobile Brigade (BRIMOB) in the Indonesian province of Papua. He was a political activist and an alleged member of a separatist movement (free Papua Movement or Organisasi Papua Merdeka (OPM)). It is reported that during interrogation about the whereabouts of local pro-independence guerrillas (OPM/TPN), BRIMOB officers shot Mr. Wayeni and sliced his abdomen open with a bayonet, causing his death. It is alleged that the victim was unarmed and not politically active at the time of his arrest. BRIMOB maintains that Wayeni's injuries came while he was resisting arrest with a homemade firearm. A video was reportedly recorded a few moments before Mr. Wayeni's death by an unknown source. It shows Indonesian police officers taunting Mr. Wayeni as he laid dying from the gunshot wounds the officers had inflicted on him. The film shows the officers insulting him while he exclaims the word "independence."

On 30 August 2010, Mr. Kasmir Timumun, aged 19, was found hanging in a police cell at the Biau sector police station, Central Sulawesi. He was arrested on suspicion of speeding and injuring a police officer. The police alleged that he had committed suicide; however his family indicated that there were signs of torture such as bruises on his body. The family requested an autopsy however this was denied. There were protests in response to the death of Mr. Timumun and the protestors raided Biau sector police station. They allegedly attacked police officers and burnt motorcycles parked outside the police station. The police opened fire on the protesters, killing seven people and injuring at least twenty. We are informed that an investigation was initiated and several police officers were questioned.

On 15 September 2010, an unidentified man driving a motorcycle accidentally hit a female Arfak tribal leader. The accident occurred in front of the offices of the Commando of Brigade Mobile police in Rendani Manokwari. After the accident the driver ran and hid in the police offices. Several people gathered outside the offices demanding that the man should come out. When the police refused to release the driver, the protesters started pelting stones at the police officers.

In response the police opened fire and killed Reverend Naftali Kuan, aged 58 and his son Septinue Kuan, aged 33. Mrs. Antomina Kuan, aged 55, was shot in the neck and taken to Monokwari Hospital. It is alleged that the victims were attempting to calm down the people who were demanding the release of the driver.

Two unidentified Papuan men were subjected to torture by State security forces probably in Tinninambut in Puncak Jaya regency. The torture was filmed and widely diffused on the internet by unknown individual(s). The first part of the video shows men being slapped around the face and threatened with knives by what appear to be Indonesian security force officers in plain clothes. The men who were hog-tied, then suffocated with a plastic bag, or have their genitals repeatedly branded with a burning stick.

In the second part of the video, two bound men are subjected to physical abuse by soldiers in uniform. The video shows the soldiers kicking a group of men - seated and bound - in the head. The soldiers insult and humiliate them while they are being questioned about their supposed involvement with armed separatist groups. One of the men is also threatened with a knife to the throat. On 11 November 2010, the Cendarawasih Military Court III/19 in Jayapura handed a five month sentence of imprisonment to three low-ranking officers of the Pam Rahwan Yonif 753/Arga Vira Tama squad. The three officers, Chief Pvt Sahminan Husain Lubis, Second Pvt Joko Sulistiono and Second Pvt Dwi Purwanto, were accused of being responsible for the torture and ill-treatment of the who are the subject of this letter.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the relevant principles applicable to this case under international law. The International Covenant on Civil and Political Rights (ICCPR), to

which your Excellency's is a party, provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed that "The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

We would also like to bring to the attention of your Excellency's Government that under international law use of force by the police is strictly circumscribed. We would like to note the relevance of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment." Besides, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

International law 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. The mandate of the Special Rapporteur on summary execution has analyzed in detail the safeguards of proportionality and necessity in a report submitted to the General Assembly. It has been submitted that "proportionality requirement imposes an absolute ceiling on the permissible level of force based on the threat posed by the suspect to others; the necessity requirement imposes an obligation to minimize the level of force applied regardless of the level of force that would be proportionate. With regard to necessity it has been submitted that 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". With regard to the principle of proportionality it has been submitted that the "taking someone's life is permitted only to protect the lives of others from him or her — but gains a measure of complexity inasmuch as use of force rules must be applicable *ex ante*." (A/61/311)

We urge your Excellency's Government to take measures to regulate the use of force by the police. In this regard the Basic Principles in particular principle 1 provides that "Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review." The mandate of the Special Rapporteur on summary executions has submitted a study on police oversight mechanisms to the Human Rights Council (A/HRC/14/24/Add.8) which may be of guidance to your Excellency's Government in the creation and operation of effective external mechanisms as part of a system of combating extrajudicial killings by the police and ensuring accountability to address impunity.

We would also like to draw the attention of your Excellency's Government that international law requires that in cases of allegations of violation of the right to life there should be investigations that are effective, comprehensive and independent as well as prompt and transparent. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular Principle 9 states that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". This principle was reiterated by the Human Rights Council in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

With regard to the victims and member of their families we would also like to recall Article 2 of the ICCPR which provides that each State Party must "ensure that any person whose rights or freedoms ... are violated shall have an effective remedy" and that "any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy."

In the context of the treatment of the abovementioned, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

With regard to the adequacy of punishment for torture involving the three accused officers, we wish to draw your Excellency's Government's attention to paragraphs 49 & 50 of the report of the Special Rapporteur on Torture to the sixty fifth session of the General Assembly - pursuant to paragraph 38 of General Assembly resolution 64/153. The report states that "the fact that torture is either not codified or not properly defined in national criminal laws facilitates too lenient penalties, not commensurate with the gravity of the crime. This is another factor that can contribute to a climate of impunity by sending a non-deterrent message to potential perpetrators and by nurturing a lack of awareness among judges and lawyers. While the Convention does not indicate a specific penalty for torture, it is generally accepted that the punishment should be similar to the penalties established for the most serious offences in each national legal framework. This would ensure that sentences are commensurate with the gravity of the offence and that no statutes of limitations apply."

Further, we would also like to draw your Excellency's Government's attention to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. I would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who

encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture”.

We urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the torture and deaths of the above-mentioned victims with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

1. Are the facts alleged in the above summaries accurate?
2. Please provide the full details of any disciplinary action and prosecution undertaken with regard to the police officers/security forces, if any, found responsible for unlawful use of force.
3. Please indicate whether compensation has been provided to the families of the victims.
4. Please indicate what broader steps, if any, are being taken to address unlawful use of force by the police/security forces, to promote accountability and to prevent recurrence of such acts.

Islamic Republic of Iran

Imposition of the death penalty on Juveniles

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 2 juveniles (1 male and 1 female)

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 11 February 2011, sent with the Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency’s Government to information we have received concerning the imposition of the death penalty upon **Ms. Fatemeh Salbehi** and **Mr. Ehsan Rangraz Tabaatabaa’ie**, who were reportedly both juveniles at the time the alleged criminal offences were committed.

According to the information received

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

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

In 2007, Mr. Rangraz Tabaatabaa'ie, now aged 19, and two other men were arrested on suspicion of having committed sodomy rape when Mr. Rangraz Tabaatabaa'ie was 17 years old. After interrogation the two other accused persons denied the accusations and were subsequently released. However, it is alleged that Mr. Rangraz Tabaatabaa'ie was beaten, blackmailed and forced to confess. He was later charged with the offence of "*lavat be onf*", *i.e.* consummated sexual activity between males, whether penetrative or non-penetrative, under article 108 of the Iranian penal code. We are informed that under Iranian law *lavat* includes both consensual and forcible sodomy between men.

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

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

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

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

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency's Government's attention to the fact that any judgments imposing the death sentence upon juvenile offenders are incompatible with the international obligations entered into under various instruments. Article 37(a) of the Convention on the Rights of the Child, which the Islamic Republic of Iran ratified on 13 July 1994 and article 6(5) of the International Covenant on Civil and Political Rights (ICCPR), which the Islamic Republic

of Iran ratified on 24 June 1975, provide that the death penalty shall not be imposed on persons who were below eighteen years of age at the time of commission of the crime.

Furthermore, we would like to bring to the attention of your Excellency's Government article 6(2) of ICCPR which provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". In interpreting article 6(2) of the Covenant, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the "most serious crimes" provision. The Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report under the Covenant of your Excellency's Government that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant. This would include imposition of the death penalty for the offence of sodomy.

Moreover, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of Ms. Fatemeh Salbehi and of Mr. Rangraz Tabaatabaa'ie. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this context, and with regard to the allegations according to which Mr. Rangraz Tabaatabaa'ie was beaten, blackmailed and forced to confess, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

With regard to the allegations according to which the court proceeded to use the confession as a basis for the ruling despite the fact that Mr. Rangraz Tabaatabaa'ie informed the court that his confession had been extracted under torture, we would like to draw your Excellency's Government's attention to article 15 of the Convention against Torture which provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in article 7 of the International Covenant on Civil and Political Rights.

With regard to the allegations that procedural guarantees set forth in the Iranian constitution and the penal code were not complied with during the trial of Mr. Rangraz Tabaatabaa'ie and that the requirement of access to legal representation was not respected during his trial and during the arrest and interrogation of Ms. Fatemeh Salbehi, we wish to stress that, especially in capital punishment cases, there is an obligation to scrupulously respect the rights of the accused including the right to "a fair and public hearing before an independent and impartial tribunal" (article 14(1) ICCPR). In this respect, we would also wish to draw the attention of your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of

13 December 1985. In particular article 6 which stipulates that “[t]he principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected”. These rights also include access to legal representation as enshrined in article 14 (3) ICCPR which stipulates that “In the determination of any criminal charge against him, everyone shall be entitled ... (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; (d) ... To defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right.”

We would therefore respectfully request your Excellency’s Government to take all necessary steps to ensure that the two persons mentioned above are not executed. Moreover, in order to ensure compliance with the absolute ban of the death sentence against juvenile offenders who were below the age of eighteen at the time of commission of the offence in international human rights law, the sentence will have to be commuted.

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the two persons mentioned above are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

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

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

Are the facts alleged above accurate?

Please provide information on the measures undertaken to ensure that any statement or confession obtained under torture is excluded from judicial proceedings.

Islamic Republic of Iran: Imposition of the death penalty for non-serious crimes- drug trafficking charges

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: Group concern

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 26 January 2011, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 8/3.

In this connection, I would like to draw the attention of your Excellency's Government to information I have recently received regarding the **pattern of executions** that has reportedly been or may be carried out throughout the country, **the majority of which in relation to drug trafficking charges**. The execution of a group of individuals on charges of drug trafficking has been the subject of a previous communication dated 9 June 2010, to which your Excellency's Government has yet to reply.

Furthermore, I wish to express my deep concern at information received indicating that **Mr. Mohammad Ali Haj-Aghaie** and **Mr. Jafar Kazemi**, who were the subject of a joint urgent appeal dated 11 January 2011, were executed. In this communication, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the independence of judges and lawyers; the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances as well as my mandate had urged your Excellency's Government not to proceed with the executions and to fully cooperate with thematic special procedures mandate-holders as recommended by the General Assembly in its resolution 65/226 (21 December 2010, para. 8).

According to the information received

a) Over the last few months from October 2010 until now in January 2011, a high number of executions has reportedly been carried out across the country, many of which have been conducted at Mashad's Vakilabad Prison on charges related to drug trafficking. This includes the following alleged cases of executions:

- 23 executions by hanging took place in early October 2010 at Mashad's Vakilabad Prison,
- 10 executions on 26 October 2010 in the same prison,
- 11 executions on 9 November 2010,
- 9 executions on 30 November 2010,
- 2 at Saveh Prison on 4 December 2010,
- 22 executions on 19 December 2010,
- 1 in Sari Prison on 25 December 2010,
- 8 in Qom Prison on 1 January 2011,
- 7 in Kermanshah Prison on 3 January 2011,
- 16 in Ahvaz Prison on 5 January 2011,
- 2 in Boroujerd Prison on 7 January 2011,
- 4 in Isfahan Prison on 8 January 2011,
- 1 in Esfarayen on 8 January 2011,
- 7 in Tehran on 12 January 2011,
- 5 in Khorramabad on 13 January 2011,
- 1 in Kerman's Zarand Prison on 18 January 2011 and,
- 10 in Karaj's Rajae Shahr Prison on 19 January 2011.

The following cases of executions of foreign citizens have in particular been brought to my attention:

On 17 November 2010, Mr. **Ernie Tamonde**, a citizen of the Philippines, has reportedly been executed at Vakilabad Prison. The Philippine embassy was reportedly informed of the execution of Mr. Ernie Tamonde. However, it was alleged that embassy officials had been unable to visit Vakilabad Prison since January 2010.

It is further alleged that Mr. **Paul Chindo**, a Nigerian citizen, and Mr. **Aquasi Aquabe** of Ghana have respectively been executed on 26 October and on 18 August 2010 at Vakilabad Prison.

Representatives of their embassies have allegedly stated that they had only been informed of the execution of their respective citizens, after the executions had been carried out and that they were still waiting for the official confirmation.

In Ahwaz Prison in, on 31 December 2010, three detainees, referred to as **A.A.**, **H.M.** and **J.J.**, were reportedly executed. They were allegedly sentenced to death on charges of carrying and possessing narcotics by the Khuzestan Penal Court. It is further alleged that the sentence was upheld by the Supreme Court.

It is further alleged that about 600 individuals detained in this prison are on death row.

b) Furthermore, it is alleged that **Mr. Jafar Kazemi**, aged 47, and **Mr. Mohammad Ali Haj-Aghaie**, aged 62, were hanged on 24 January 2011. Both were reportedly found guilty of enmity against God in relation to their alleged membership of the People's Mojahedin Organization of Iran (PMOI). Concerns had also been raised that they had been threatened and arrested for having visited relatives in Camp Ashraf.

Without prejudging the accuracy of these allegations, I would like to respectfully remind your Excellency's Government - as in a number of previous communications - that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes.

In this respect, I would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, which the Islamic Republic of Iran ratified on 24 June 1975, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. When the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, para. 8).

As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude charges of drug trafficking from those for which the death penalty can be imposed under international law.

With regard to the allegation that the representatives of the Philippine embassy were not granted access to Vakilabad Prison and with regard to the allegation that the embassies of Nigeria and Ghana had only been informed of the execution of their citizens after it had been carried out, we would like to refer your Excellency's Government to the Vienna Convention on Consular Relations of 1963, which the Islamic Republic of Iran ratified on 5

June 1975. In particular article 36(1) which states that: “With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. (...);

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement.”

I would therefore appeal to your Excellency’s Government not to proceed with the remaining executions, which would, on the facts available to me, clearly constitute a violation of international law. Considering the incompatibility of the imposition of the death penalty for charges which have not resulted in a loss of life, I also urge your Excellency’s Government to commute the death sentence of all the persons charged with drug trafficking related offences.

In this regard, I also wish to draw the attention of your Excellency’s Government to the recommendations contained in the Report of the Working Group on the Universal Periodic Review (A/HRC/14/12, 15 March 2010), which enjoyed your Excellency’s Government’s support and which recalls to consider a moratorium on the death penalty with a view to abolishing it; amend the relevant legislation to abolish capital punishment entirely, in keeping with General Assembly resolutions 62/149 and 63/168; transfer the existing death sentences to imprisonment terms; commute all death sentences, in particular executions of political prisoners, and abolish, in practice, public executions by hanging and stoning. In the voluntary commitments and replies to these recommendations, your Excellency’s Government has also ensured that “death sentences are only issued for the most serious crimes” (A/HRC/14/12/Add.1, para. 18).

I urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and that no executions that are in violation of international law will take place on other charges that, for the purposes of the death penalty, cannot be regarded as “the most serious crimes”, such as executions concerning drug trafficking charges.

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

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

1. Are the facts alleged above accurate?
2. Please indicate the specific conduct the above mentioned persons have been found guilty of as well as the legal basis of the death sentence imposed upon them. Please explain

how these are compatible with the requirement contained in article 6(2) of the International Covenant on Civil and Political Rights.

3. Please also indicate whether and when the consulates or embassies of Ernie Tamonde, Paul Chindo and Aquasi Aquabe have been informed of the execution of their respective citizens. Please provide information on the measures which have been and are taken by the authorities to comply with article 36(1) of the Vienna Convention on Consular Relations in all cases of execution involving foreign citizens.

4. Please provide statistics as to the number of persons sentenced to death for the offence of drug trafficking and the number of those executed in the past five years.

Islamic Republic of Iran: Imposition of the death penalty for non-serious crimes

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: Group concern

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the Government of the Islamic Republic of Iran. He however regrets that the execution of Mr. Khezri was carried out despite the concerns that such an execution was tantamount to a summary execution. The Special Rapporteur is concerned that the death penalty continues to be imposed for non-serious crimes and that trials do not comply with due process safeguards. The Special Rapporteur reiterates the call made in a press release of 2 February 2011, that the Government should issue a moratorium for the death penalty. The Special Rapporteur also notes that some of the concerns raised in the communication were not addressed by the Government. Concerning the information provided on the case of Ms. Zahra Bahraimi, the Special Rapporteur believes that carrying out the death sentence on the basis of charges which do not constitute “most serious crimes” according to international law would be unlawful and therefore calls for a commutation of the sentence.

Urgent appeal dated 11 January 2011, sent with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we write to express our concern about reports regarding **the pattern of executions, arrests and detentions carried out and which may be carried out**. This matter has been the subject of previous communications between your Excellency’s Government and our mandates. Reports on recent executions prompt us to again raise our concerns in this respect, which have not been alleviated by the replies received from your Excellency’s Government in response to previous communications.

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

I. We have received information on the following cases concerning the persons’ alleged membership of the People’s Mojahedin Organization of Iran (PMOI):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Since then, he has reportedly been transferred several times to other detention facilities, where he was allegedly subjected to further acts of torture. Since the 18 September 2008, Mr. Khezri has been transferred to Sepah Al Mehdi prison in Orumiyeh, to the Western Azerbaijan's Information Ministry headquarter on 15 February 2009, to Qazvin prison, 200 miles from Orumiyeh, and back to Orumiyeh prison on 11 May 2009.

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

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

Without prejudging the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to our main concerns regarding the pattern of executions, arrests and detentions described in the above summary.

On the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

As regards the allegations of the execution of Mr. Ali Saremi and Mr. Ali Akbar Siadat on 28 December 2010, the risk of imminent execution of Mr. Mohammad Ali Saremi, Mr. Jaafar Kazemi, Mr. Mohammad Ali Haj-Aghaei, Mr. Javad Lari, Mr. Mohsen Daneshpour Moqadam, and his son Mr. Ahmad Daneshpour, Mr. Hossein Khezri and Mr. Reza Sharifi Bukani, and the imposition of the death sentence upon Ms. Farah Vazehan, Mr. Abdolreza Ghanbari, we would like to express serious concerns at what appears to be a

lack of appropriate consideration of, and action in relation to our requests on behalf of individuals at risk of execution.

In this connection, we would like to draw the attention of your Excellency's Government to the recommendations contained in the Report of the Working Group on the Universal Periodic Review (A/HRC/14/12), which enjoyed your Excellency's Government's support and which recalls to consider a moratorium on the death penalty with a view to abolishing it; amend the relevant legislation to abolish capital punishment entirely, in keeping with General Assembly resolutions 62/149 and 63/168; transfer the existing death sentences to imprisonment terms; commute all death sentences, in particular executions of political prisoners, and abolish, in practice, public executions by hanging and stoning.

Furthermore, we would like to make an urgent appeal to your Excellency's Government to implement these recommendations and to spare on humanitarian grounds the life of the above-named persons.

We would also like to remind your Excellency's Government that an extreme form of corporal punishment is judicial corporal punishment, and that the Human Rights Committee has called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.

In this regard, we would also like to draw your Excellency's Government's attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, which said that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment, and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para. 28 A/60/316).

With regard to the allegations of secret detention of Mr. Ali Akbar Siadat and the allegations of transferring Mr. Hossein Khezri from Orumiyeh prison and Mr. Reza Sharifi Bukani from Rajayi Shahr (Gohardasht) prison to an undisclosed location, we would like to draw the attention of your Excellency's Government to paragraph 7(c) of Human Rights Council Resolution 8/8, which "reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person."

With respect to the allegations of possible enforced disappearances of Mr. Reza Sharifi Bukani, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which sets out necessary protection by the State, including in:

- Article 2 (no State shall practice, permit or tolerate enforced disappearances);
- Article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- Article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance);
- Article 9 (right to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty);
- Article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with

national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest);

- Article 12 (right to the maintenance in every place of detention of official up-to-date registers of all detained persons).

Furthermore, we would also like to bring to the attention of your Excellency's Government that should the source submit the above mentioned allegation as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

With respect to the allegations according to which Mr. Ali Akbar Siadat did not have contact with his family and was forced to accept charges brought against him, we would like to draw your Excellency's Government's attention to Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world ...". We would also like to draw your attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits." We also recall that paragraph 6(c) of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in Article 7 of the International Covenant on Civil and Political Rights.

With regard to the allegation according to which Mr. Khezri filed a complaint against his ill-treatment and was subsequently threatened for having submitted it, we would like to draw your Excellency's Government's attention to paragraph 7(b) of Resolution 8/8 of the Human Rights Council, which stated that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture."

Concerning the allegations of executions, imminent risks of execution and imposition of the death penalty on the charges of enmity against God, propagation against the regime, alleged membership in a proscribed organization and participation in protests, we also wish to reiterate – as it was already addressed in a number of previous communications – that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner. In this respect, we would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, which Iran ratified on 24 June 1975, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime". In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, "finding only cases involving murder not to raise concerns under the "most serious crimes" provision.

As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes ... that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, para. 8).

With regard to the due process concerns raised in this communication, we would also like to stress that, especially in capital punishment cases, there is an obligation to scrupulously respect the rights of the accused including the right to provide criminal defendants with "a fair and public hearing before an independent and impartial tribunal" pursuant to Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR). In the light of the allegations of lack of access to legal representation and preparation of the defence, and the allegation of forced confession, we wish to recall that in the determination of any criminal charge against him, everyone shall be entitled, according to Article 14(3) ICCPR:

- "(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing (...);
- (g) Not to be compelled to testify against himself or to confess guilt."

On 21 December 2010, the General Assembly adopted resolution 65/226 on the situation of human rights in the Islamic Republic of Iran, in which it expressed deep concern that despite its standing invitation to all thematic special procedures mandate holders, the Islamic Republic of Iran has not fulfilled any requests from those special mechanisms to visit the country in five years and has left unanswered the vast majority of the numerous and repeated communications from those special mechanisms. The Assembly strongly urged your Excellency's Government "to fully cooperate with the special mechanisms, including facilitating their visits to its territory, so that credible and independent investigations of all allegations of human rights violations can be conducted" (resolution 65/226, para. 8).

We appeal on an urgent basis to your Excellency's Government not to proceed with the remaining executions, which would, on the facts available to us, clearly constitute a violation of international law. Considering the irreversible nature of capital punishment, we also urge your Excellency's Government to suspend the death sentence of the persons mentioned in the above summary until the question whether the acts they were found guilty of satisfy international criteria for what constitutes the "most serious crimes" has been clarified and that the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled.

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

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

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

1. Are the facts alleged in the above summary of the cases accurate?
2. Have complaints been lodged by or on behalf of the aforementioned persons or by and on behalf of their families? If that is the case, please indicate the measures which have been taken to address it.
3. Please specify the legal basis for the arrest, detention and imposition of the death penalty of the persons mentioned in the above summary, as well as the specific conduct upon which they have been found guilty. Please indicate how these are compatible with international norms, specifically with those contained, inter alia, in the International Covenant on Civil and Political Rights.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the cases described in the above summary. In the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide detailed information regarding access to legal counsel, the public nature of hearings and judgments, the conviction and sentence, and the post-conviction proceedings in the cases of Mr. Mohammad Ali Saremi, Mr. Jaafar Kazemi, Mr. Mohammad Ali Haj-Aghaei, Mr. Javad Lari, Ms. Farah Vazehan, Mr. Abdolreza Ghanbari, Mr. Ahmad Danespour Moqhaddam, Mr. Mohsen Daneshpour Moqhaddam, Mr. Hossein Khezri, and Mr. Reza Sharifi Bukani.
6. Please provide information on the fate and whereabouts of Mr. Reza Sharif Bukani as well as his current health condition. If his fate and whereabouts are unknown, please provide the details on any investigation or other queries which may have been carried out. If no queries have taken place, or if they have been inconclusive, please explain why.
7. Please provide information on the measures undertaken to ensure that any statement or confession obtained under torture is excluded from judicial proceedings.
8. Please indicate the number of persons who have been executed in the Islamic Republic of Iran in the last five years.

Government reply dated 4 February 2011

In connection with the conviction of Ms. Zahra Bahrami, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to reports, Ms. Bahrami was charged with membership in the illegal "Monarchial Society", participation in last year's riots and incidents which followed Iran's presidential elections, possession of 450 grams of cocaine, 420 grams of opium and the selling of 155 grams of cocaine. Ms. Bahrami was arrested on a temporary warrant and sent to prison on 31 December 2009. Considering the many charges laid against Ms. Bahrami, by Branches 15 and 26 of Tehran Court of Revolution, her dossier was thoroughly investigated. On charges of possession and selling of drugs and the charge of *Moharebeh* (enmity with God); Branch 15 of the Islamic Court of Revolution, on the

basis of para. 6 of article 8 and para. 2 of article 5 of the law on illicit drugs and the explicit confessions of the accused – defense was provided by her lawyer, Ms. Zhinous Sharif Razi – sentenced Ms. Bahrami to be executed, her property to be confiscated and the payment of 14 million Rials in fines.

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

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

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

Islamic Republic of Iran: Imminent execution of Mr Saeed Malekpour

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 31 December 2010, sent with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention, solitary confinement, systematic ill-treatment and the imminent execution of Mr. **Saeed Malekpour**.

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

According to the information received

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

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

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

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

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

b) As a consequence of being severely beaten, lashed on his head and face with cables and administered a painful electric shock, his face was reportedly extremely swollen and Mr. Malekpour lost consciousness several times. That same night, after having been brought back to the cell, his ear was also bleeding. Mr. Malekpour banged on the door for help but no one came. The following day, as he allegedly could not move due to paralysis of half of his body, he was brought to Evin Prison’s clinic. Upon examination of Mr. Malekpour’s injuries, the clinic’s doctor strongly recommended that he be taken to the hospital. However, he was reportedly transferred back to his cell and left alone until 9 p.m.

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

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

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

Mr. Malekpour was reportedly compelled to confess that he was purchasing software from the United Kingdom, which he posted on his website for sale. He was further allegedly forced to confess that each time someone visited his website, a software was installed onto the person’s computer allowing control over the webcam, even when the computer was

switched off. The interrogators have allegedly ignored Mr. Malekpour's explanation that this was impossible from a technological standpoint.

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

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

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

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

On 4 December 2010, Mr. Saeed Malekpour was sentenced to death on the charges of "agitation against the regime" and "insulting the sanctity of Islam". According to the presiding judge, the sentence was ordered by the Iranian Revolutionary Guard. On the same day, Mr. Malekpour was reportedly placed in solitary confinement for refusing to sign off his death sentence. According to the latest information received, Mr. Malekpour still remains in solitary confinement and no official document confirming the death sentence has been transmitted to his lawyer. In this regard, concerns have been raised as to the possibility for the lawyer to appeal against the sentence within the delay of twenty days imposed by law.

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

Furthermore, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In this connection and with regard to the allegation of beating, ill-treatment and torture of Mr. Malekpour, we would also like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified,

and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

With regard to the allegations of holding Mr. Malekpour in prolonged solitary confinement, we would also like to draw your Excellency's Government's attention to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged” (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

Furthermore, with regard to the allegation indicating that despite the doctor's recommendation to place Mr. Malekpour in a hospital, Mr. Malekpour was transferred back to his cell and left alone, we would further like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.” (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

With regard to the allegation according to which Mr. Malekpour was held in a cell measuring 2m x 1,7m, we would like to draw your Excellency's Government's attention to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

With regard to the allegation according to which Mr. Malekpour was denied visits from his family, we would further like to draw your Excellency's Government's attention to Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, “A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]”. We would also like to draw your attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

With regard to the allegation according to which Mr. Malekpour was subjected to forced confession, we would also like to draw your Excellency's Government's attention to article 15 of the Convention against Torture provides that, “Each State Party shall ensure that any

statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in Article 7 of the International Covenant on Civil and Political Rights.

We would also like to draw your Excellency’s Government’s attention to Resolution 8/8 of the Human Rights Council reminding Governments that corporal punishment, can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your Excellency’s Government’s attention to the report to the 60th session of the General Assembly, in which the Special Rapporteur on Torture, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. We also note that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment, and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.

We also wish to draw to the attention of your Excellency’s Government that carrying out the execution of Mr. Saeed Malekpour would be incompatible with the international obligations that the Islamic Republic of Iran has undertaken under various instruments. Article 6(2) of the of the International Covenant on Civil and Political Rights (ICCPR), which the Islamic Republic of Iran ratified on 24 June 1975, stipulates that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.”

As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency’s Government, it expressly stated in its concluding observations that it “considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant” (CCPR/C/79/Add.25, para. 8).

On 21 December 2010, the General Assembly adopted resolution 65/226 on the situation of human rights in the Islamic Republic of Iran, in which the Assembly expressed deep concern at serious ongoing and recurring human rights violations in the Islamic Republic of Iran relating to, *inter alia*: “[...] (d) The imposition of the death penalty for crimes that lack a precise and explicit definition, [...] or for crimes that do not qualify as the most serious crimes, in violation of international law” (resolution 65/226, para. 2).

We would also like to bring to the attention of your Excellency’s Government that, especially in capital punishment cases, there is an obligation to scrupulously respect the

rights of the accused to “a fair and public hearing before an independent and impartial tribunal” (Article 14 of the International Covenant on Civil and Political Rights, ICCPR).

Particularly relevant to the case at hand with regard to the allegation that the accused did not have regular access to legal representation and was not provided with the means to prepare his defence, is article 14.3(b) of the International Covenant on Civil and Political Rights, which establishes that in the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing. In its General Comment 32, the Human Rights Committee has interpreted the words “adequate facilities”, as including granting access to documents and other evidence. According to the Committee “this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory” (CCPR/C/GC/32, para. 33).

With regard to the allegation of interference with the discharge of the professional functions of the judge in charge of the case, we would like to draw the attention of your Excellency’s Government to the Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular, principle 1, which states that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and to observe the independence of the judiciary. Principle 4 further states that there shall not be any inappropriate or unwarranted interference with the judicial process. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

In this regard, we would also like to refer your Excellency’s Government to the Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002, which states that:

“- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.”

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Malekpour are respected. Considering the irreversible nature of capital punishment, this can only mean suspension of the death sentence against him until the question has been clarified, whether the acts he was found guilty of satisfy international criteria for what constitutes “most serious crimes”, and that the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled.

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

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

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

2. Has a complaint been lodged by or on behalf of Mr. Saeed Malekpour? In that case, please indicate the measures which have been taken to address it.
3. Please specify the legal basis for the arrest and detention of Mr. Malekpour. Please indicate how these are compatible with international norms, specifically with those contained, inter alia, in the International Covenant on Civil and Political Rights.
4. Please also indicate the specific conduct Mr. Malekpour has been found guilty of, as well as the legal basis of the death sentence imposed upon him. Please explain how these are compatible with the requirement contained in article 6(2) of the International Covenant on Civil and Political Rights.
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. In the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. Please provide detailed information regarding access to legal counsel, public nature of hearings and judgments, the conviction and sentence, and the post-conviction proceedings in the case of Mr. Malekpour.
7. Please provide information on the measures undertaken to ensure that any statement or confession obtained under torture is excluded from judicial proceedings.

Islamic Republic of Iran: Imposition of the death penalty for non-serious crimes - Apostacy

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 30 December 2010, sent with the Chair-Rapporteur of the Working Group on Arbitrary Detention; and Special Rapporteur on freedom of religion or belief.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr. **Behrouz Sadegh-Khanjani** and Mr. **Yousef Nadarkhani**, two Protestant pastors living in the Islamic Republic of Iran.

According to the information received

Mr. Behrouz Sadegh-Khanjani is Chair of the Pastoral Council of the Church of Iran, and is currently held in a security prison in Shiraz where he has been since June 2010 on charges of apostasy. He has been arrested on account of his faith on a total of three different occasions in the past four years. In December 2006, he was arrested for apostasy, but was acquitted and released in January 2007. He was again arrested in January 2010 along with two other pastors after being summoned to Shiraz to offer an explanation for the church's activities. He was released on bail on 17 March 2010. Upon returning to Shiraz on 16 June 2010, following another summons to "present his defence", he was re-arrested. Mr. Sadegh-Khanjani has now been charged with apostasy, blasphemy and "contact with the enemy". In the period between his arrest and late November 2010, and despite the seriousness of the charges against him, Pastor Khanjani has been given access to his attorney only once.

During most of his imprisonment he has been held in solitary confinement. It is reported that Mr. Sadegh-Khanjani's health is suffering due to extremely unhygienic conditions and because he has experienced the infliction of deliberate harm.

Mr. Yousef Nadarkhani, a 33-year-old member of the Church of Iran ministry and pastor of an approximately 400-person congregation in the northern city of Rasht, faces the death sentence. After complaining locally about the Muslim monopoly on the religious instruction of children in his country, Mr. Nadarkhani was arrested and initially charged for protesting. He has been in prison in Lakan since 12 October 2009. Later the charges were changed to apostasy and evangelism of Muslims. The authorities reportedly used various methods to induce him to return to Islam, including giving him drugs, apparently to provide evidence to the claim that he was insane. On 21 and 22 September 2010, Mr. Nadarkhani was put on trial, found guilty and verbally given a death sentence. The written verdict was delivered on 13 November 2010 by the First Court of the Revolutionary Tribunal. The judgment indicated that Mr. Nadarkhani was born to Muslim parents but converted to Christianity when he was 19 and that he admitted during interrogations having left Islam for Christianity. However, Mr. Nadarkhani reportedly said during his trial that his interrogators pressured him into making the statement and that before he was 19 he did not have any religion. An appeal has been filed by Mr. Nadarkhani's lawyer on 5 December 2010, however a date for an appeal hearing has yet to be set. Unless the appeal proves successful Mr. Nadarkhani is to be executed by hanging for the crime of apostasy.

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

We also wish to draw to the attention of your Excellency's Government that carrying out the executions of Mr. Sadegh-Khanjani and Mr. Nadarkhani would be incompatible with the international obligations that the Islamic Republic of Iran has undertaken under various instruments. Article 6(2) of the of the International Covenant on Civil and Political Rights (ICCPR), which the Islamic Republic of Iran ratified on 24 June 1975, stipulates that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide." The death penalty is limited to the "most serious crimes". As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, para. 8).

On 21 December 2010, the General Assembly adopted resolution 65/226 on the situation of human rights in the Islamic Republic of Iran, in which the Assembly expressed deep concern at serious ongoing and recurring human rights violations in the Islamic Republic of Iran relating to, *inter alia*: "[...] (d) The imposition of the death penalty for crimes that lack a precise and explicit definition, [...] or for crimes that do not qualify as the most serious crimes, in violation of international law" (resolution 65/226, para. 2)

Moreover, we would like to appeal to your Excellency's Government to ensure that Mr. Sadegh-Khanjani and Mr. Nadarkhani enjoy the right to freedom of religion or belief in accordance with article 18 of the Universal Declaration on Human Rights and article 18 of the International Covenant on Civil and Political Rights. Furthermore, the General Assembly, in its resolution 65/211, "urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end: (a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practise freely one's religion, including the right to change one's religion or belief, is violated; (b) To ensure that existing legislation is not implemented in a discriminatory way or does not result in discrimination based on religion or belief, and that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights;" (resolution 65/211, para. 12).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Sadegh-Khanjani and Mr. Nadarkhani?
3. Please indicate the specific conduct on the basis of which Mr. Sadegh-Khanjani has been arrested and detained as well as the specific conduct on the basis of which Mr. Nadarkhani has been found guilty of and the legal basis of the death sentence imposed against him. Please indicate how these are compatible with international norms, specifically with international norms and standards as contained, inter alia, in the International Covenant on Civil and Political Rights.
4. Please also specify how the imposition of the death sentence upon Mr. Nadarkhani is compatible with the requirement contained in article 6(2) of the ICCPR that the "sentence of death may be imposed only for the most serious crimes in accordance with the law and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide".
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

Islamic Republic of Iran: Imminent execution of Mr. Habibollah Latifi

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur thanks the Government for the response to the urgent appeal dated 30 December 2010. He takes note of the charges on the basis of which Mr. Latifi was convicted. Nevertheless, he regrets the absence of information on a number of issues. To date, the query to provide the definition of *moharebeh* under Iranian law has remained without a reply. The Special Rapporteur would appreciate a response from the Government concerning the exact definition of *moharebeh* under Iranian law. Furthermore, no information was provided regarding due process guarantees, the Special Rapporteur would appreciate receiving clarification on the outstanding issues.

Urgent appeal dated 30 December 2010, sent with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the imminent execution and solitary confinement of Mr. **Habibollah Latifi**.

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

The Special Rapporteur on extrajudicial, summary or arbitrary executions has also reiterated this concern in previous communications. We acknowledge receipt of your Excellency's Government's replies to the communications dated 26 July 2007 (reply dated 23 August 2008) and 18 July 2008 (reply dated 8 April 2009). Concerning the other previous communications which addressed similar cases dated 31 August 2006, 24 April 2008, 28 April 2009, 23 April 2010 and 25 November 2010, we would appreciate a reply from your Excellency's Government.

According to further information received

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

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

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

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

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

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

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In this connection and with regard to the allegation according to which, since 16 January 2010 Mr. Latifi has been held in solitary confinement, we would like to draw your Excellency's Government's attention to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights. (Adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged". (Adopted by the General Assembly by resolution 45/111 of 14 December 1990).

We would also like to draw your Government's attention to Resolution 8/8 of the Human Rights Council reminded Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your Government's attention to the report of the Special Rapporteur on Torture to the 60th session of the General Assembly, in which he concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The report also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

Furthermore, we also wish to draw to the attention of your Excellency's Government that carrying out the execution of Mr. Habibollah Latifi would be incompatible with the international obligations that the Islamic Republic of Iran has endorsed. Article 6(2) of the

of the International Covenant on Civil and Political Rights, which the Islamic Republic of Iran ratified on 24 June 1975, stipulates that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law.” The death penalty is limited to the “most serious crimes”. As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it “considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant” (CCPR/C/79/Add.25, para. 8).

On 21 December 2010, the General Assembly adopted resolution 65/226 on the situation of human rights in the Islamic Republic of Iran, in which the Assembly expressed deep concern at serious ongoing and recurring human rights violations in the Islamic Republic of Iran relating to, inter alia: “[...] (d) The imposition of the death penalty for crimes that lack a precise and explicit definition, including moharabeh (enmity against God), or for crimes that do not qualify as the most serious crimes, in violation of international law” (resolution 65/226, para. 2).

With regard to the allegation that the trial was held behind closed doors, we would also like to bring to the attention of your Excellency's Government that, especially in capital punishment cases, there is an obligation to scrupulously respect the rights of the accused including the right to “a fair and public hearing before an independent and impartial tribunal” (Article 14 of the International Covenant on Civil and Political Rights, ICCPR). In this respect, we would like to draw the attention of your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular article 6 which stipulates that “[t]he principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected”.

Particularly relevant to the case at hand with regard to the allegation that the accused's lawyer and his family were not allowed to attend the trial is also article 14(3) ICCPR according to which: “3. [i]n the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) To (...) defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.

We should also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the person named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Furthermore, we would like to draw your Excellency's Government's attention to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary

confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged” (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights under international law of Mr. Habibollah Latifi are respected. Considering the irreversible nature of capital punishment, this can only mean suspension of the death sentence against him until the question whether the acts they were found guilty of satisfy international criteria for what constitutes “most serious crimes” has been clarified, the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled.

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

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the specific conduct Mr. Habibollah Latifi has been found guilty of and the legal basis of the death sentence imposed against him. Please indicate how this is compatible with international norms, specifically with the requirement in article 6(2) of the ICCPR
3. To date, the query to provide the definition of moharebeh under Iranian law has remained without a reply. We would appreciate your Excellency’s Government response concerning the exact definition of moharebeh under Iranian law.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegation that Mr. Habibollah Latifi was subjected to acts of torture. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide details regarding access to legal counsel, public nature of hearings and judgments, the conviction and sentence, and the post-conviction proceedings in the case of Mr. Habibollah Latifi.

Please provide information on the charges which have been the basis for the arrest of Mr. Habibollah Latifi’s family members. Please provide details on whether these family members have been given access to legal counsel.

Government reply of 15 February 2011

In connection with the conviction of Mr. Habibollah Latifi, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to existing information, Mr. Latifi has been charged with the following offences: (a) conspiring against national security by supporting the Pejak terror group and advancing its goals; (b) establishment of organizational relations and contacts with Pejak members and liaisons in the city of Senandaj – Province of Kurdistan –

and taking part in several acts of sabotage and terror, one of which resulted on the martyrdom (killing) of an Iranian police officer; (c) fabrication of handmade grenades, in collaboration with several Pejak members and supporters; (d) conspiracy to plant explosives in a cultural exhibition – the resulting fire led to the total destruction of the exhibition and injury to exhibition staff; (e) distribution of Pejak pamphlets, with the intent to foment public unrest in the city of Sanandaj.

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

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

Islamic Republic of Iran: Imminent execution of Mr. Khezri and Ms Jalalian

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1 male and 1 female

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal of 25 November 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the imminent execution of Mr. **Hossein Khezri** and Ms. **Zeynab Jalalian**.

Mr. Khezri and Ms. Jalalian were the subjects of previous communications dated 14 January 2010 and 23 April 2010, to which I have yet to receive a reply from your Excellency's Government. In the communications concern was raised with regard to the compatibility of the imposition of the death penalty on the charge of moharebeh with international law obligations accepted by the Islamic Republic of Iran.

According to the information received Mr. Khezri and Ms. Jalalian are at imminent risk of execution. They were both convicted on the charge of "enmity against God" (moharebeh).

Mr. Hossein Khezri was arrested on 31 July 2008, in Kermanshah. On 11 July 2009, he was convicted for "enmity against God" (moharebeh) and endangering state security, and sentenced to death. During his detention, Mr. Khezri was reportedly subjected to torture. His request for an investigation of the allegations of torture was denied in March 2010. On 11 April 2010, he was transferred from Oromieh Central Prison to an unknown location.

Ms. Zeynab Jalalian was arrested in 2007 and held in a Ministry of Intelligence detention facility. It is believed that she was not granted access to a lawyer during her trial. In January

2009, Ms. Jalalian was convicted by the Kermanshah Revolutionary Court for “enmity against God” and was sentenced to death. The sentence was confirmed by the Supreme Court on 26 November 2009. In March 2010, Ms. Jalalian was transferred from Kermanshah Prison to an unknown location. In late March, she was transferred to Section 209 of Evin Prison.

Without prejudging the accuracy of the information received, I wish to draw to the attention of your Excellency’s Government that carrying out the execution of Ms. Zeynab Jalalian and Mr. Hossein Khezri (or Khaziri) would be incompatible with the international obligations that the Islamic Republic of Iran has undertaken under various instruments which I have been mandated to bring to the attention of Governments.

Article 6(2) of the of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party, stipulates that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law.” The death penalty is limited to the “most serious crimes”. As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it “considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant” (CCPR/C/79/Add.25, paragraph 8).

The General Assembly has recently, in a resolution on the situation of human rights in the Islamic Republic of Iran, expressed deep concern at serious ongoing and recurring human rights violations in the Islamic Republic of Iran relating to, inter alia: “The imposition of the death penalty for crimes that lack a precise and explicit definition, including moharabeh (enmity against God), or for crimes that do not qualify as the most serious crimes, in violation of international law” (A/C.3/65/L.49)

In view of the urgency of this matter and of the irreversibility of the punishment of the death penalty, it is imperative that your Excellency’s Government should take all steps necessary to prevent the execution of Ms. Zeynab Jalalian and Mr Hossein Khezri (or Khaziri), which if carried out will be inconsistent with acceptable standards of international law.

Islamic Republic of Iran: Imposition of the death penalty for non-serious crimes

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1 female

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 29 September 2010, sent with the Special Rapporteur on the independence of judges and lawyers.

In this connection, we would like to draw the attention of your Excellency’s Government to information we have recently received regarding the situation of **Ms Zeynab Jalalian**, who

was sentenced to death for the offence of “enmity against God”. Information now made available to us indicates that during her trial two lawyers who sought to represent her were prevented from taking up her defence.

The case of Ms Jalalian has previously been brought to the attention of your Excellency’s Government in a communication dated 23 April 2010. In the communication concern was raised with regard to the compatibility of the imposition of the death penalty on the charge of *moharebeh* with international law obligations accepted by the Islamic Republic of Iran. A reply is yet to be received from your Excellency’s Government.

We would like to reiterate concerns raised in previous communications to your Excellency’s Government and that carrying out the execution of Ms. Zeynab Jalalian would be incompatible with the international obligations that the Islamic Republic of Iran has undertaken under various instruments which we have been mandated to bring to the attention of Governments.

Without prejudging the accuracy of these allegations, we would like to respectfully remind your Excellency’s Government - as in a number of previous communications addressed to the Islamic Republic of Iran - that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. In this respect, we would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in a report to the Human Rights Council by the mandate on extrajudicial executions, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report under the Covenant of your Excellency’s Government that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant.

With regard to the allegation that the lawyers seeking to represent Ms Jalalian were prevented from doing so, we would like to refer your Excellency’s Government to article 14 (3) of the International Covenant on Civil and Political Rights, which states that “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (d) ... to defend himself in person or through legal assistance of his own choosing”. In cases which carry the death penalty the Human Rights Committee has stressed that “legal assistance to the accused in a capital case must be provided in ways that adequately and effectively ensure justice” (*Pinto v Trinidad and Tobago* Communication no. 232/1987).

In view of the urgency of this matter and of the irreversibility of the punishment of the death penalty, it is imperative that your Excellency’s Government should take all steps necessary to prevent the execution of Ms Zeynab Jalalian, which if carried out will be inconsistent with acceptable standards of international law.

It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on this

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

1. Are the facts alleged above accurate?
2. Please indicate the specific conduct that Ms Zeynab Jalalian was found guilty of and the legal basis of the death sentence imposed against her. Please indicate how this is compatible with international norms, specifically with the requirement in article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, that the “sentence of death may be imposed only for the most serious crimes in accordance with the law”.

Please indicate the reasons why the lawyers seeking to represent Ms Jalalian were prevented from doing so.

While answers to the above are outstanding, we request you not to execute Ms Jalalian.

Islamic Republic of Iran: Imposition of the death penalty on a juvenile

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

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

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 31 August 2010, sent by the the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency’s Government to information I have received regarding the case of **Mr. E. H.**, reportedly sentenced to death on charges of sodomy. The alleged offence was committed when he was 16.

My predecessor had previously brought to the attention of your Excellency’s Government the case of Mr. E. H., in a communication dated 22 December 2009. I am yet to receive a reply to this communication from your Excellency’s Government. In the communication concern was raised that in July 2008, the Second District of the Criminal Court of Tabriz had found Mr. Mahdi Pooran, Mr. Hamid Taghi, Mr. E. H. and Mr. Mehdi Rezaii guilty of committing sodomy and sentenced them to death. The four men had been involved in a fight and they were later arrested on charges that they had committed sexual assault on one of the men they had been fighting with.

According to information recently received

During a trial before the provincial court Mr. Mahdi Pooran, Mr. Hamid Taghi, and Mr. Mehdi Rezaii were acquitted. It alleged that the three men were promised that they would be freed if they testified against Mr. E. H.. Mr. E. H. was sentenced to death. Reportedly he had confessed to the crime three days after his arrest, however he retracted the confession which he contends was made under duress.

The Supreme Court has rejected the provincial court’s verdict twice and has ordered a re-examination of the case, but the provincial court apparently intends to proceed with the execution.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw your Excellency's Government's attention to the fact that any judgments imposing the death sentence and executions of juvenile offenders are incompatible with the international legal obligations which the Islamic Republic of Iran has undertaken under various instruments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

Further I would like to bring to the attention of your Excellency's Government article 6(2) of the International Covenant on Civil and Political Rights, which provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. The Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report under the Covenant of your Excellency's Government that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant.

I would therefore respectfully request your Excellency's Government to take all necessary steps to ensure that Mr. E. H. is not executed. Moreover, in order to ensure compliance with the absolute ban of the death sentence against juvenile offenders in international human rights law, the death sentence will have to be commuted.

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

1. Are the facts alleged above accurate?
2. Please provide information on why the provincial court intends to proceed with the execution despite the order by the Supreme Court that the case be re-examined.

Islamic Republic of Iran: Arrest of Lawyer working on capital punishment cases

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 29 July 2010, sent with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of **Mr. Mohammad Mostafaei**, a human rights lawyer, **and his family**.

According to the information received

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

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

Serious concern is expressed about the fact that his questioning by the authorities and the arrest of his wife and brother-in-law may be linked to his activity in defence of human rights and in particular to his work as counsel in many human rights cases, including the recent case of Ms. Sakineh Mohammadi Ashtiani.

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

We would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular Principle 16, which stipulates that Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Furthermore, we would like to draw your attention to Principle 17, which provides that, where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities; and Principle 18, providing that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. Furthermore, Principle 20 stipulates that lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

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

Furthermore, we would like to bring to the attention of your Excellency's Government the article 9, para. 3, point c) of the Declaration which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Mohammad Mostafaei and his family in compliance with the above international instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by Mr. Mohammad Mostafaei, Ms. Fereshteh Halimi, or by Mr. Farhad Halimi, or on their behalf?
3. Please provide information on how the arrest of Ms. Fereshteh Halimi and Mr. Farhad Halimi are compatible with international norms and standards. What are the charges that have been brought against them, if any?

Islamic Republic of Iran: Imposition of the death penalty for non-serious crimes-adultery

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1 female

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response and clarification on the case received from the Government of the Islamic Republic of Iran. He however regrets that the Government did not provide statistics as to the number of persons sentenced to death and the number executed in the past three years for the offence of adultery.

Urgent appeal dated 24 June 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the imminent execution of Ms **Mohammadi-Ashtiani who has been sentenced to death by stoning for committing adultery with two men after having been convicted for the same offence on the charge of illicit relations.**

According to information received

Ms Mohammadi-Ashtiani has been in jail in Tabriz for the past five years. She was initially sentenced on 15 May 2006 by a court in the city of Osku in the North West Iranian province

of East Azerbaijan for the crime of having “illicit relations” with the two men, in other words engaging in conduct that did not constitute sexual intercourse. She was sentenced to 99 lashes for the offence of having illicit relations.

On 10 September 2006, a second charge relating to the same offence was brought against Ms Mohammadi-Ashtiani and she was charged with the offence of adultery before the Sixth Branch of the Penal Court of East Azerbaijan Province. Ms Mohammadi-Ashtiani denied the charge and according to information received, no relevant evidence was admitted against her and she was convicted solely on the basis of the judge’s opinion that she had committed adultery. She was subsequently sentenced to death by stoning. We are informed that the court recently issued a final verdict in the matter and that her execution is imminent. Ms Mohammadi-Ashtiani has appealed for clemency from the Head of the Judiciary in the Islamic Republic of Iran, Head of the Ministry of Justice in East Azerbaijan Province and from the Pardons Commission.

The imposition of the death penalty for the offence of adultery has been the subject a previous communication between your Excellency’s Government and our respective mandates. In a communication dated 27 January 2010, we brought to the attention of your Excellency’s Government the case of Ms. Sareimeh Ebadi, aged 30, and Mr. Bu-Ali Janfeshani, aged 32, who had been sentenced to death by stoning for adultery. We are yet to receive a reply to this communication from your Excellency’s Government.

While we do not wish to prejudge the accuracy of these allegations, we would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party, provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As the Special Rapporteur on Extrajudicial Executions observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report under the Covenant of your Excellency’s Government that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant.

With regard to the allegation that a second charge relating to the same offence was brought against Ms Mohammadi-Ashtiani we would like to bring to the attention of your Excellency’s Government the prohibition of “*ne bis in idem*” as stipulated in Article 14 (7) of the ICCPR which provides that “No one shall be liable to be tried or punished for an offence for which he has already finally been convicted or acquitted in accordance with the law and penal procedure of each country”.

We would also like to recall that stoning constitutes an inhuman and degrading treatment. In this regard, we would like to draw your Excellency’s Government’s attention to Resolution 2005/39 of the Commission on Human Rights, which reminded Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your Excellency’s Government’s attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which, with reference to the jurisprudence of UN treaty bodies, he concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law,

including the prohibition of corporal punishment, and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (A/60/316, para.28). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

We would moreover like to recall that, as a State Party to the International Covenant on Civil and Political Rights, your Excellency's Government has undertaken to ensure equality between men and women in the enjoyment of all civil and political rights, including the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading punishment. In this regard, we continue to be concerned about the reported imbalance between the number of men and women sentenced to death on charges of adultery, which raises certain questions in terms of possible discrimination in relation to both criminal enforcement and sentencing in adultery cases (see our communication to your Excellency's Government of 30 July 2008). It would be important to have gender disaggregated data on the use of the death penalty for adultery in the Islamic Republic of Iran. In this regard, we also would like to refer to article 2 of the Convention on the Elimination of all Forms of Discrimination against Women, which calls on States Parties to condemn discrimination against women in its all forms and pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

We urge your Excellency's Government to take all necessary measures to ensure that the rights under international law of Ms Mohammadi-Ashtiani are respected. Considering the irremediable nature of capital punishment and the fact that the death sentence for adultery is incompatible with your Government's obligations under international law, this can only mean suspension of the executions and eventually commutation of the death sentence.

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

1. Are the facts alleged in the above summaries accurate?
2. Please provide statistics as to the number of persons sentenced to death and the number executed in the past three years for the offence of adultery. In particular, indicate how many men and how many women were sentenced to death and executed for the offence of adultery.

Please indicate what measures are in place to ensure that your Excellency's Government complies with article 6(2) of the International Covenant on Civil and Political Rights provision that "sentence of death may be imposed only for the most serious crimes".

Government response dated 28 March 2011

In connection with the case of Mrs. Sakineh Mohammadi Ashtiani, the High Council of Human Rights of the Judiciary of the Islamic Republic of Iran has approached all judicial authorities and courts. According to Mrs. Ashtiani's dossier:

On 14 September 2005 the police 110 hotline received reports of a suspicious death in the city of Osco. A police team was dispatched to investigate the reports. Upon arriving on the scene the team found the body of a man who was later identified as Ebrahim Ghaderzadeh 44.

Sometime later, Mrs. Sakineh Mohammadi Ashtiani, wife of the deceased, confessed at a police station to having had an extramarital affair with Mr. Issa Taheri, adding that on

numerous occasions Mr. Taheri, a distant relative, had encouraged her to divorce her husband and marry him. Following a recent argument with her husband, Mrs. Ashtiani was persuaded by Mr. Taheri to help murder Mr. Ghaderzadeh.

To further investigate the murder, branch 12 of Eastern Azerbaijan courts directed the provincial forensics office to perform an autopsy on the deceased. The autopsy however, proved inconclusive and could not establish the cause of death. The court ordered the forensics office to perform another autopsy. On 3 December 2005 forensics reported that upon closer examination, signs of stress (electric burn marks) had been found on the face, neck, chest, fingers and toes of the deceased.

In its final report, the forensics office stated that: “since there are no signs of beatings or injury – besides the burn marks – as well as the absence of toxins in the toxicology report, we have concluded that Mr. Ghaderzadeh was first injected with a tranquilizer and then electrocuted”.

Under additional interrogation, on 26 November 2005, Mrs. Ashtiani accepted charges of adultery and extramarital relations with Mr. Issa Taheri. She went on to say “Mr. Taheri deceived me. We injected my husband and later electrocuted him. I had relations with him two months before the incident. We had kept in touch by telephone, and met a few times.” She was asked by her interrogator whether she had relations with other men; to which she said “I had relations with Mr. Ali Nojomee and his cousin whose name I do not know. Ms. Mahnaz Daryani acted as the go between. The two men once came to my house and I had intercourse with both of them and they paid me twenty thousand Tomans. I have had intercourse with other men from Tabriz for money.”

In a separate statement Mr. Nojomee stated “I confirm what Mrs. Ashtiani has said about having extramarital relations with me and my cousin.”

Subsequently Mrs. Ashtiani was charged with being an accessory to murder. Since her other crime – extramarital relations – was outside the competence of the first prosecutors’ office, the matter was referred to Eastern Azerbaijan penal courts. As a result, branch 6 of the court was tasked with dealing with the case. Initially Mrs. Ashtiani chose Mr. Akbar Zare as her defense attorney. However on the day of the hearing, Mr. Sohrab Samanghan replaced Mr. Zare. Later in the course of the hearing, Mrs. Ashtiani denied having had relations with married men.

After the completion of the trial in which police reports – including reports about Mrs. Ashtiani’s notoriety and moral laxity as a repeat adulteress, results of 30 November 2005, 6 December 2005 and 25 December 2005 interrogation sessions, as well as previous admissions of the accused – including admittance to having murdered her husband with the aid of Mr. Taheri (for which a separate case is still pending in another branch) – were presented, the court issued verdict number 38 dated 10 September 2006. The verdict which was based on articles 63, 83 and 105 of the penal code sentenced Mrs. Ashtiani to death for repeated adultery.

The sentence was appealed by Mrs. Ashtiani and her attorneys Mr. Akbar Zare and Mr. Sohrab Samangan. As a result branch 39 of the Supreme Court re-examined the verdict. However, by issuing verdict number 39/206 dated 27 May 2007; the court upheld the initial verdict. Subsequently, the verdict was handed down to the sentence implementation department. Nonetheless – despite the existence of a definite verdict - it has not been carried out. Sometime later, Mr. Houtan Kian, along with Mr. Mohammad Mostafae and Ms. Hujar Sabagheyan produced a power of attorney letter naming them as Mrs. Ashtiani’s council.

On charges of being an accessory to the murder of Mr. Ebrahim Ghaderzadeh, Mrs. Ashtiani was brought before branch 12 of Eastern Azerbaijan Penal court. The accused was

defended by Mr. Akbar Zare and Mr. Habib Asadi. After the presentation of confessions, witness given by Mr. Saeed Ghaderzadeh, phone records – showing 37 calls, including an unusual number of calls between the defendants on 12 September 2005 (two days before the murder) – forensic reports stating electric shock as the cause of death, and numerous other pieces of evidence, by issuing verdict number 39 dated 6 November 2006 – as based on articles 42, 203, 206, 212, 231 and 612 of the penal code - the court sentenced Mrs. Ashtiani to ten years of imprisonment for the private aspect of the crime committed and for disturbing and offending public order and sensibilities. Her coconspirator was given a heavier sentence. The decision of the court was later appealed by Mrs. Ashtiani's attorneys. As a result, branch 31 of the Supreme Court reviewed the lower court's verdict. After hearing the argument of Mrs. Ashtiani's defense team and the re-examination of the dossier, the court found the team's argument unconvincing and upheld the original verdict.

It is worth reiterating that throughout her trials – as can be surmised from the above information – due process was observed and Mrs. Ashtiani was provided access to attorneys.

Islamic Republic of Iran: Imposition of the death penalty for non-serious crimes- drug trafficking

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 26 people

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 9 June 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding **the execution of thirteen individuals on 7 June and the imminent execution of another thirteen individuals, reportedly all on drug trafficking charges.**

According to the information received

The thirteen individuals have been executed without legal representation. Most of the death sentence verdicts were issued by the 1st Branch of the Revolutionary Court. Most of the accused have reportedly asked to be pardoned, though their request was turned down by the Parole Board, despite the fact that some had no history of past convictions. Among those reported to be executed were Mohammad Jafari, Mohammad Azarfam, Bagher Amini, Soltan Abadi, Mohammad Moradi and Nader Azarnoush.

Without prejudging the accuracy of these allegations, I would like to respectfully remind your Excellency's Government - as in a number of previous communications addressed to the Islamic Republic of Iran - that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. In this respect, I would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". In interpreting article 6(2) of the

Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I have observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude charges of drug trafficking from those for which the death penalty can be imposed under international law. Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report under the Covenant of your Excellency's Government that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant.

I would therefore appeal on an urgent basis to your Excellency's Government not to proceed with the remaining executions, which would, on the facts available to me, clearly constitute a violation of international law.

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

1. Are the facts alleged above accurate?
2. Please provide statistics as to the number of persons sentenced to death for the offence of drug trafficking and the number of those executed in the past five years.

Islamic Republic of Iran: Imminent execution of Mr. Khezri and Ms. Jalalian

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1 male and 1 female

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur The Special Rapporteur appreciates the response received from the Government of the Islamic Republic of Iran. He however regrets that the Government has not provided an explanation on the compatibility of the death sentence imposed with the international obligation that a death sentence may be imposed only for the most serious crimes in accordance with the law.

Urgent appeal dated 23 April 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the imminent execution of **Hossein Khezri** and **Zeynab Jalalian**.

According to the information received

Mr. Hossein Khezri was arrested on 31 July 2008 in Kermanshah. On 11 July 2009, he was convicted for "enmity against God" (moharebeh) and endangering state security, and sentenced to death. During his detention, Mr. Khezri was reportedly subjected to torture, leading to the partial loss of his eyesight. His request for an investigation of the allegations of torture was denied in March 2010. On 11 April 2010, he was transferred from Oromieh Central Prison to an unknown location. Such transfers of persons sentenced to death are a common indication that an individual's execution is imminent.

Ms. Zeynab Jalalian was arrested in the spring of 2008 and held in a Ministry of Intelligence detention facility. It is believed that she was not granted access to a lawyer during her trial. In January 2009, Ms. Jalalian was convicted by the Kermanshah Revolutionary Court for “enmity against God” and was sentenced to death. The sentence was confirmed by the Supreme Court on 26 November 2009. In March 2010, Ms. Jalalian was transferred from Kermanshah Prison to an unknown location. In late March, she was transferred to Section 209 of Evin Prison. It is believed that her transfers are in preparation for her execution.

The Special Rapporteur on extrajudicial executions has previously addressed your Excellency’s Government in a communications dated 31 August 2006, 26 July 2007, 24 April 2008, 18 July 2008, 28 April 2009, and 12 October 2009 and 14 January 2009. He has raised concern with regard to the compatibility of the imposition of the death penalty on the charge of moharebeh with international law obligations accepted by the Islamic Republic of Iran.

In the communication dated 14 January 2010 he inter alia raised the cases of Ms. Zeynab Jalalian and Mr Hossein Khaziri (or Khezri) in which he urged your Excellency’s Government to take all necessary measures to guarantee that no one is executed on the basis of a judgment finding him or her guilty of moharebeh, that all death sentences imposed on charges of moharebeh are reviewed, and that the death penalty is no longer imposed on charges of moharebeh.

In this connection, we wish to draw to the attention of your Excellency’s Government that carrying out the execution of Ms. Zeynab Jalalian and Mr Hossein Khaziri (or Khezri) would be incompatible with the international obligations that the Islamic Republic of Iran has undertaken under various instruments which we have been mandated to bring to the attention of governments.

Article 6(2) of the of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party, stipulates that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law.” Two issues relevant to the imposition of the death penalty on charges of moharebeh arise from this provision:

- For the sentence of death to be imposed “in accordance with the law”, the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not punishable.
- The death penalty is limited to the “most serious crimes”. As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it “considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant” (CCPR/C/79/Add.25, paragraph 9).

The Special Rapporteur on extrajudicial executions has indicated that the definition of moharebeh in Article 186 of the Islamic Penal Code of Iran would appear to require only that the accused resorted to arms for the purposes of causing “terror or fear or [breaching] public security and freedom.” Article 191, moreover, would appear to explicitly clarify that the death sentence on charges of moharebeh can be imposed even where the conduct did not result in any death or injury. The definition of the offence under the Islamic Penal Code

would therefore appear not to be compatible with the “most serious crime” requirement for capital offences in international law.

With regard to the allegations that Mr. Hossein Khaziri (Khezri) was subjected to torture, we would also like to draw your Government’s attention to paragraph 6 b and e of Human Rights Council Resolution 8/8 adopted in June 2008 which urges States “to take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold persons, who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed [...] and “to ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation [...].

In view of the urgency of this matter and of the irreversibility of the punishment of the death penalty, it is imperative that your Excellency’s Government should take all steps necessary to prevent the execution of Ms. Zeynab Jalalian and Mr Hossein Khaziri (or Khezri), which if carried out will be inconsistent with acceptable standards of international law.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr Hossein Khaziri (or Khezri)?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate the specific conduct that Ms. Zeynab Jalalian and Mr Hossein Khaziri (or Khezri) were found guilty of and the legal basis of the death sentences imposed against them. Please indicate how these are compatible with international norms, specifically with the requirement in article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, that the “sentence of death may be imposed only for the most serious crimes in accordance with the law”.
6. Please explain the definition and elements of “mohareb” under Iranian law.

Government response dated 18 March 2011

With regards to Ms. Zeinab Jalalian’s case, the Human Rights Council of the Judiciary of the Islamic Republic of Iran has approached all pertinent judicial authorities and courts. According to reports, Ms. Jalalian was charged with the following crimes: Violent armed rebellion against the system of the Islamic Republic of Iran

Membership in Pejak terrorist group

Possession and transportation of illegal firearms and military equipment

Propaganda against the state, and in favor of hostile groups

Ms. Jalalian's case was brought before Branch 1 of Kermansha's Court of Islamic Revolution. Upon completion of all judicial processes, the court – by issuing verdict number 1403 dated 3/12/2008 – sentenced Ms. Jalalian to death. The verdict was appealed by Ms. Jalalian and her counsel Mr. Fariborz Ensanimehr. As a result the case was reviewed by Kermanshah appellate court; however by issuing verdict number 88909978324400157 dated 6/05/2009, the verdict of the previous court was upheld.

On behalf of Ms. Jalalian and in the context of Islamic mercy, a request for amnesty, or commutation of sentence, was lodged with the judiciary's amnesty committee – which requires the culprit to be kept in prison – in difference to Ms. Jalalian's situation, she was incarcerated in Kermanshah's rehabilitation center.

Statements otherwise are falsehoods and untrue.

To provide some context, below, the Human Rights High Council of the Judiciary of the Islamic Republic of Iran has included some background information on Pejak terrorist group.

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

In 1978, the Kurdistan Workers party (PKK) was established under the leadership of Abdollah Ojlan. The stated goal of the PKK was to establish an independent Marxist-Leninist Kurdistan. To promote itself, the group initially organized cultural programs geared towards Kurdish youth. However, it soon took up arms to forcefully work towards the establishment of an independent Kurdistan. Several governments reacted to this turn of events and tried to counter PKK's sabotage and terrorist campaign. Sometime later, the leader of the group, Abdollah Ojlan was arrested by Turkey. Ojlan's supporters responded to the news by protest rallies and plunging a number of Kurdish areas into a crisis.

When PKK arrived in Iran, it initially engaged in a recruitment drive. Later, it expanded its activities and started to train members and establish a network of cells. Later still, PKK's local version, the 'Pejak' announced its inception and stated its goal as an armed campaign to overthrow the Islamic Republic of Iran. Pejak went to engage in a bloody campaign of bombings and terrorist attacks.

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

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

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

Iraq

Statement prejudging outcome of trial

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 39 males

Character of reply: Largely satisfactory answer

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the Government of Iraq. However, he would appreciate receiving updated information on the outcome of the trials and the sentence which has been imposed, if any, upon the 39 individuals subject of the appeal.

Urgent appeal dated 17 December 2010, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the recent statement made by the Minister of Interior that about **39 detainees suspected of having links with al-Qa'ida linked groups will be executed**. The situation of suspects accused of terrorism-related offences has already been the subject matter of several joint communications by various Special Procedures mandate holders, most recently by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, by letter dated 1 December 2010.

According to information received:

On 2 December 2010, the Ministry of Interior convened a press conference where Government officials paraded about 39 detainees suspected of having rejoined al-Qa'ida linked groups after their release from prison. Some of those detained are suspected of having links with Iraq's al-Qa'ida branch known as "State of Iraq" (ISI), including Mr. Azim al-Zawi, reportedly the third-highest leader of the ISI, Mr. Ahmed Hussein 'Ali, known as the "Mufti of Anbar" and Mr. Abdul Razzaq, the organization's alleged media chief.

It is alleged that at the press conference, the Minister of Interior is quoted to have said "today, we will send these criminals and the investigation results to the courts that will sentence them to death. Our demand is not to delay the carrying out of the executions against these criminals [in order] to deter terrorist and criminal elements."

Without prejudging the accuracy of the information reported to us, we would like to bring to the attention of your Excellency's Government that although international law does not prohibit the death penalty, it nonetheless mandates that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner. It is essential that capital punishment, whenever it is resorted to, should fully respect all fair trial standards contained in international human rights law in the relevant proceedings with the sentence being pronounced only following a regular judicial process.

We are concerned with the alleged statements made by the Minister of Interior which seem to pre-judge the outcome of the trial. We would like to bring to attention of your Excellency's Government article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) which your Excellency's Government ratified on 25 February 1971. The provision states that "Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law". This provision is fundamental in capital punishment cases as provided under article 6 of the ICCPR that "this penalty can only be carried out pursuant to a final judgment rendered by a competent court".

Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution, which by definition violates human rights standards. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of the accused persons are fully respected. Were it true that the Minister of Interior has in advance of the trial pronounced himself of its outcome, including the sentence of death, we take the view that only through full respect for the right to a fair trial and through excluding the use of capital punishment in the 39 cases in question can Iraq reach compliance with its international human rights obligations.

Concerning the allegation that the 39 detainees are suspected of having links with al-Qa'ida associated groups which it would appear from the factual basis of the terrorism-related charges that have reportedly been brought against them, we would like to stress that the principle of legality in criminal law, enshrined in several international human rights instruments such as article 15 of the International Covenant on Civil and Political Rights and made non-derogable in times of public emergency, implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct.

In our view, at the national level, terrorist crimes should be defined by the presence of two cumulative conditions: (1) The means used, which can be described as deadly or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; and (2) the intent, which is to cause fear among the population or the destruction of public order or to compel the government or an international organization to do or refraining from doing something, usually in the advancement of a political, religious or ideological cause. It is only when these two conditions are fulfilled that an act may be criminalized as terrorist.

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

1. Are the facts alleged in the summary of the case accurate?
2. Please provide information on the exact charges that have been made against the 39 detainees.
3. Please indicate what measures are put in place to ensure that due process guarantees are respected in accordance with international fair trial standards, including the right to presumption of innocence.

Please also indicate whether and how the requirements of the principle of legality have been observed in relation to the definition of the terrorism-related offences with which the 39 detainees have reportedly been charged.

Government response dated 11 March 2011

(Translated from Arabic)

His Excellency the President of the Higher Judicial Council, in his letter dated 8 February 2011, requested that you be informed that the accused who were the subject of your above-mentioned letter, and their group, were arrested by the joint United States-Iraqi forces on the basis of information supplied by the United States forces, according to a report sent to the General Directorate for Combating Terrorism and Organized Crime. The information concerns the activities of the suspects, who belong to the Al-Qaida organization. All the accused were interviewed in accordance with the legal procedures stipulated in the Code of

Criminal Procedures No. 23 of 1971; that is, a legal record of their statements was made by the investigating judge of the Central Court of Investigation, in the presence of a deputy public prosecutor and a designated lawyer. They had been arrested on the basis of arrest warrants issued further to information supplied by the joint forces, and their detention was extended in accordance with decisions taken by the investigating judge. Their confessions concerning the commission of criminal acts as members of the Al-Qaida terrorist organization have been substantiated.

All the accused had arrest warrants issued against them and were subsequently detained, in accordance with the provisions of article 4/1 of the Anti-Terrorism Act No. 13 of 2005. When we examined the investigation documents, we found that their cases have not yet been closed, because not all the accused, or their accomplices in the crimes committed, have been arrested and because the investigation has yet to be completed, given the gravity of the crimes involved.

Regarding your query about respect for due process, every stage of the investigation and all the decisions issued in the case have been reviewed by the deputy public prosecutor, who has confirmed that they accord with law. Moreover, the judiciary is independent and subject to no authority save the law. The issues you raised in the letter accompanying your above-mentioned note, and the words of His Excellency the Minister for Internal Affairs, if it is true that he pronounced them, have no bearing on the proceedings. The role of the executive authority is limited to enforcing the decisions of investigating judges, while the staff of the Public Prosecutor's Office constantly monitor legal proceedings and follow up on legal guarantees afforded to accused persons. Once the investigation is completed, the accused will be sent before the competent tribunal, which will conduct the trial on the basis of the evidence and facts in its possession.

Iraq: Imposition of the death penalty on Mr. Aziz, Mr. Shakir and Mr. Hamoud

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 3 November 2010, sent with Chair-Rapporteur of the Working Group on Arbitrary Detention.

In this connection we would like to bring to the attention of your Excellency's Government information we have received regarding the imminent execution of Mr **Tariq Aziz**, Mr **Sadoun Shakir**, and Mr **Abed Hamoud**.

According to information received

On 26 October 2010, Mr Tariq Azizi, Mr Sadoun Shakir and Mr Abed Hamoud were sentenced to death by the Supreme Iraqi Criminal Tribunal. They were convicted for participating in the killings of opposition political activists during the rule of Mr. Saddam Hussein. They could be executed within 30 days if their sentences are confirmed by the court of appeal.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the relevant principles of international law. Although international law does not prohibit the death penalty, it nonetheless mandates that it must be

regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Further, we wish to refer your Excellency's Government to article 6, paragraph 4, of the International Covenant on Civil and Political Rights (ICCPR) which states: "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases". It is essential that capital punishment, whenever it is resorted to, should fully respect all fair trial standards contained in international human rights law in the relevant proceedings with the sentence being pronounced only following a regular judicial process.

The Special Rapporteur on the independence of judges and lawyers has submitted a report to the Human Rights Council on the legal problems of the Supreme Iraqi Criminal Tribunal observing that "The Special Rapporteur has followed from the outset the establishment and activities of the Iraqi Supreme Criminal Tribunal and, in a number of reports and press releases, has pointed to the serious irregularities characterizing its establishment and functioning. ...the Statute does not rule out confessions obtained as a result of torture or arbitrary detention, includes as offences acts which were defined as such only after their commission by Saddam Hussein's regime, and does not protect the right not to testify against oneself" (A/62/207. paras 61-63).

Additionally the Special Rapporteur on the independence of judges and lawyers has raised concern at the General Assembly on the judicial proceedings taking place before the Tribunal noting that "Despite the commitment and personal efforts of the judges and the cooperation provided by several countries in setting up the tribunal, he is concerned that the pressure weighing on the judges and the prevailing insecurity in Iraq may undermine its independence. Moreover, the tribunal itself has its deficiencies, some of which can be traced back to the manner in which it was set up, and in particular to the restriction of its jurisdiction to specific people and a specific time frame; i.e., the tribunal may only try Iraqi citizens for acts committed prior to 1 May 2003, when the occupation began. The tribunal's power to impose the death penalty demonstrates the extent to which it contravenes international human rights standards. As it was established during an occupation and was financed primarily by the United States, its legitimacy has been widely questioned, with the result that its credibility has been tarnished. The Special Rapporteur urges the Iraqi authorities to follow the example set by other countries with deficient judicial systems by asking the United Nations to set up an independent tribunal which complies with international human rights standards." (A/60/321) Further the Special Rapporteur has noted in the General Assembly reservations about the functioning of the Supreme Iraqi Criminal Tribunal and voicing concern at the violation of international human rights principles and standards, in particular the right to be tried by an impartial and independent tribunal and the right to a defence. (A/61/384Para 58).

The Working Group on Arbitrary Detention has expressed similar concerns in its opinion on Mr. Saddam Hussein al-Tikriti v. Iraq and United States of America, (Opinion No. 46/2005 (A/HRC/4/40/Add.1 at pg. 36). In its Opinion No.33/2006 concerning Mr. Tariq Aziz, the Working Group on Arbitrary Detention also concluded that the deprivation of liberty of Mr. Aziz was arbitrary being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights to which Iraq is a party. It urged the Government of Iraq to ensure Mr. Aziz is given a fair trial ((A/HRC/7/4/Add.1 at pg.4) paras. 23 and 24).

Without expressing at this stage an opinion on the facts of the case and whether the detention of Mr. Sadoun Sakir and Mr. Abed Hamoud is arbitrary or not, and noting the Working Group on Arbitrary Detention's opinion on Mr. Tariq Aziz, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of these individuals, not to be deprived arbitrarily of their liberty and to fair

proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the ICCPR.

Furthermore, only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights of Mr. Tariq Aziz, Mr. Sadoun Shakir, and Mr. Abed Hamoud under international law of are fully respected. Unless your Excellency's Government is able to demonstrate respect for essential procedural and substantives safeguards, which flow from the international obligations accepted by Iraq, the death sentences imposed must be commuted.

It is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since I am expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate?
2. Please provide information on what measures are in place to ensure compliance with the international standards that the death penalty should only be imposed fully respect all fair trial standards contained in international human rights law.
3. Please indicate what measures have been put in place to ensure that trials before the Supreme Iraqi Criminal Tribunal comply with international human rights principles and standards, in particular the right to be tried by an impartial and independent tribunal and the right to a defense.

Iraq: Killing of Journalists and media personnel

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State.

Subject(s) of appeal: Group concern (2 identifiable males)

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 22 October 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

In this connection, we would like to bring to your Excellency's Government's attention information we have received 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.

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.

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.

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.

Serious concern is expressed regarding the safety of journalists in Iraq, which is exacerbated by a climate of total impunity. Further concern is expressed regarding the delay by the Parliament to adopt the proposed law for the protection of journalists since it was submitted a year ago in September 2009.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by your Excellency's Government on 25 January 1971, 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."

In addition, we also deem it appropriate to make reference to Resolution 12/16 of the Human Rights Council, which calls upon States to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

Additionally, paragraph 3 of the above-mentioned resolution also states that the Human Rights Council is deeply concerned that:

(a) violations of the right to freedom of opinion and expression continue to occur, often with impunity, including extrajudicial killings, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination, including gender based violence and discrimination, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders;

(b) These violations are facilitated and aggravated by abuse of states of emergency; and

(c) Threats and acts of violence, including killings, attacks and terrorist acts, particularly directed against journalists and other media workers in situations of armed conflict, have increased and are not adequately punished, in particular in those circumstances where public authorities are involved in committing those acts.

We urge your Excellency's Government to take all necessary measures to urgently guarantee the protection of journalists and media personnel in Iraq, conduct full and impartial investigations, and ensure that the perpetrators are brought to account. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts, including through the speedy adoption of the proposed legislation on the protection of journalists in Iraq.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the full details of any investigation, criminal charges and other inquiries carried out in relation to the killings of Mr. Riad Al-Saray, Mr. Safaa Al-Dine Abdul Hameed, and Mr. Tahrir Kadhim Jawad. If no investigations or prosecution of those responsible have been undertaken, please explain why.
3. Please provide detailed information on measures that have been taken or any plans to undertake any measures to ensure the protection of journalists in Iraq.
4. Please provide updated information on the progress in adopting the proposed law for the protection of journalists.

Iraq: Death in custody

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: Group concern

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 11 May 2010, sent with 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.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the arrest of a group of between 400 and 700 men by the Iraqi Army in the Mosul region and their further transfer and abusive treatment in a secret detention facility near Baghdad.**

According to the information received, from September to December 2009, between 400 and 700 men would have been arrested and detained by the Iraqi Army in the course of an operation in the Mosul area and transferred to a secret detention facility near Baghdad, in the old Muthanna airport. Since their arrest, the whereabouts of these detainees were allegedly unknown and family members have reportedly been filing missing person reports with the Government.

In April 2010, 431 of these men would have been found in the Al Rusafa Detention Centre.

While being held in the Old Muthanna airport facility, this group of men would have been subject to torture and various forms of ill-treatment, including beatings; whipping; intentional wounding with firearms; breaking of limbs and teeth; suffocation; electric shocks; extraction of fingernails and toenails; acid and cigarette burns; rape by interrogators; detainees being forced to rape other detainees and threatened with rape of members of immediate family; humiliation; and denial of urgent medical treatment leading to, at least, one reported death in custody.

The alleged conditions of detention in the mentioned facility have reportedly been inadequate, including overcrowding and poor holding facilities. Detainees would have been intentionally denied access to medical care, family, and legal representatives. Further,

according to the information received, no registry and/or records of the detention in such facility have been kept. Detainees were allegedly forced to sign false confessions of terrorist crimes.

Grave concern is expressed about the fact that the fate and whereabouts of 431 men detained in the course of this operation were unknown between September-December 2009 and April 2010 as well as about their physical and mental integrity. Very serious concern is expressed about the fact that fate and whereabouts of a number of detainees, which could amount to over 200 men, remain unknown. Serious concern is also expressed about the allegations of torture and ill-treatment which may have led to, at least, one case of death while in custody. Further, concern is expressed about the alleged conditions of detention as well as about the allegations of denial of medical treatment, legal counselling and family contacts.

On the allegations of torture and ill-treatment, without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case(s) of the person(s) mentioned above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the latter your Government has pledged to ratify in the context of the Universal Periodic Review Process.

In this connection, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw the attention of your Excellency's Government to paragraph 7(c) of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that "Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person."

Regarding the allegation of intentional denial of medical treatment which may have led to at least one death while in custody, we would like to draw your Government's attention to the fundamental principles applicable under international law to these cases. More specifically, article 7 of the International Covenant on Civil and Political Rights, to which Iraq is a party, provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Further, article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (see, for instance, the Human Rights Committee's views in the case of *Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2).

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation

of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

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

In this connection, we would also like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.” (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

We would further like to draw your Government’s attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

In this context, we would like to draw your Excellency's Government’s attention to paragraph 6(b) of Human Rights Council Resolution 8/8, which urges States “To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture”.

Regarding the alleged forced confessions by the detainees in relation to terrorist crimes, we would like to draw your Government’s attention to article 15 of the Convention against Torture provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

Concerning the persons whose fate and whereabouts are still unknown, we wish to recall the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which sets out necessary protection by the State, including in:

- Article 2 (no State shall practice, permit or tolerate enforced disappearances);
- Article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- Article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance);
- Article 7 (no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances);
- Article 9 (right to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty);
- Article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest);
- Article 12 (right to the maintenance in every place of detention of official up-to-date registers of all detained persons).

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons referred to above.

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

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

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

1. Are the facts alleged in the above summary of the case accurate? If so, please provide details on the measures taken to find out and monitor the whereabouts of this group of men after their arrest and detention as well as their physical and mental condition. If the fate and whereabouts of a number of these men are still unknown, please provide details on any investigation or other inquiries which may have been carried out. If no inquiries have taken place, or if they have been inconclusive, please explain why.
2. Could you please indicate whether the continued detention of the concerned individuals was subject to judicial oversight by a competent judge?

3. Please provide information about the allegation that, at least, one person detained during this operation died while in custody as well as details on the investigations that may have been conducted on such case(s).
4. Has a complaint been lodged by or on behalf of the alleged victims?
5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

Israel

Excessive use of force by the Israeli Defence Forces

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation dated 19 January 2011, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection I would like to bring to the attention of your Excellency's Government information I have received concerning **the deaths of Mr. Ahmad Mahmood Mohammad Maslamany, Mr. Omar Saleem Sulaiman Qawasmeh and Mr. Khaldoun Majed Ahmad Sammoudi** as a result of the use of force by the Israeli Defense Forces (IDF).

According to the information received

(a) On 2 January 2011, **Mr. Ahmad Mahmood Mohammad Maslamany**, aged 24, was shot and killed at the Al Hamra checkpoint, North of West Bank - Area C. It is alleged that a female soldier who was behind a concrete block, about three meters from where the victim fell down, shouted something in Hebrew to the victim who did not understand the language. Afterwards, it is alleged that the soldier opened fire and shot the victim in the thigh of his right leg. He fell down on his knees, and then stood up raising his hands above his head. In reaction, other soldiers opened fire and one bullet hit the victim through his chest, resulting in his death.

A medical report from the Palestinian Red Crescent Society in Tubas indicated that bullet inlet and outlet wounds were found on the victim. One bullet entered through the left side of the chest and exited from the left armpit. A bullet fragment was also found in the right chest. Another inlet and outlet bullet wound was found in the right thigh causing a clear laceration in the thigh's bones.

(b) On 7 January 2011, **Mr. Omar Saleem Sulaiman Qawasmeh**, was killed by the IDF while asleep in his bed in the Sheikh Neighborhood, located in the H1 area of the city of Hebron. The killing took place in the context of a large scale IDF operation which targeted about 5 houses in Hebron in order to arrest five individuals who had been released from Palestinian Authority detention a few hours prior. It is alleged that around 03:45 hours, three members of the IDF broke into the house of Mr. Qawasmeh and entered the

bedroom where he was sleeping. His wife was praying inside the room. She saw the soldiers enter the room who allegedly without warning opened fire, shooting the victim. The wife of the victim started shouting and one of the soldiers covered her mouth and led her into the hallway. There were other soldiers in the hallway. They asked her for the victim's identity card.

The soldiers asked everyone in the house to go outside. About twenty one people went outside but after a few minutes they were told to go back inside. Afterwards a soldier (his name is on file with me), knocked at the door and arrested Mr. Wael Mahmoud Al-Bitar, a nephew of the deceased. Eye witnesses saw soldiers carrying the body of Mr. Qawasmeh. The body was handed to the Palestinian Red Crescent Society. It is alleged that about thirteen bullets were found in the body of Mr. Qawasmeh by Alia hospital doctors.

I am informed that the soldiers who were involved in the operation were from the Givati Brigade. Allegations have been made that Mr. Qawasmeh was mistaken for another person and had not been the intended target.

(c) On 8 January 2011, **Mr. Khaldoun Majed Ahmad Sammoudi**, aged 25, from Al-Yamun town- Jenin district, was shot to death by members of the IDF at the Al-Hamra checkpoint. Mr. Sammoudi was on his way to the Jordan valley and had to pass through the Al-Hamra checkpoint. On arrival at the checkpoint he disembarked from the taxi he was travelling in and shouted "Allah Akbar"; i.e. God is the Greatest. He then proceeded to open his jacket within sight of several soldiers who are alleged to have immediately opened fire. Four bullets were apparently shot, and Mr. Sammoudi was hit by one in the abdomen. Immediately after the shooting the IDF closed both directions of the checkpoint, and the area was announced a closed military zone and Israeli explosives' experts soon arrived at the checkpoint. The information made available to me does not indicate whether Mr. Sammoudi was armed.

Without prejudging the accuracy of the allegations reported to me I would like to express concern at the level of force used by the Israeli Defense Forces and to seek clarification of the circumstances regarding the death of the persons named above.

International law has strictly provided for the circumstances in which lethal force may be used. The United Nations Code of Conduct for Law Enforcement Officials, Article 3, states that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." (General Assembly resolution 34/169 of 17 December 1979) The commentary appended to this provision explains that "(b)... In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved, (c) The use of firearms is considered an extreme measure. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. ...". The United Nations Basic Principles on the Use of Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990) requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (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 (principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9).

In a report submitted by my mandate to the General Assembly at its sixty first session, it was noted that 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. 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” (A/61/311, paras 41- 45).

I would like to recall that there is a duty on States to investigate alleged violations of the right to life “promptly, thoroughly and effectively through independent and impartial bodies” (Human Rights Committee, General Comment No. 31, “Nature of the legal obligation on States Parties to the Covenant” (2004), (CCPR/C/21/Rev.1/Add.13), para. 15). This duty arises out of the general obligation of States to ensure the right to life of each individual, as provided under article 4(2) of the International Covenant on Civil and Political Rights (which your Excellency’s Government ratified on 3 October 1991). The Human Rights Council in Resolution 8/3 on the Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions (OP 4), provides that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this obligation includes the obligation “to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”.

I therefore, urge your Excellency’s Government to take all necessary measures to ensure that the deaths of Mr. Maslamany, Mr. Qawasmeh and Mr. Sammoudi are promptly, independently and thoroughly investigated, to ensure the accountability of any person responsible for their deaths and to prevent further recurrence of such acts.

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

Are the facts alleged in the above summary of the cases accurate?

What measures have been taken to investigate the deaths of Mr. Maslamany, Mr. Qawasmeh and Mr. Sammoudi and to ensure accountability of any persons responsible?

With specific regard to the alleged cases of killing by the IDF as a result of excessive use of force, please explain which authorities are competent to investigate and prosecute the officials responsible for unlawful killings. What steps have been taken to hold those responsible for these killings, both as material perpetrators and as commanders or instigators, criminally accountable?

Please indicate whether compensation will be provided to the families of the victims.

Please indicate what broader steps, if any, are being taken to address the use of force by the IDF, including measures that are taken to comply with the rules and principles pertaining to proportionality and necessity.

Operatoin on the “Freedom Flotilla”

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: Group concern

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 9 June 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to bring your Excellency's Government's attention to information I have received concerning the deaths of at least nine as yet unnamed individuals, and injuries to dozens more, which reportedly occurred when your Excellency's Government's armed forces raided six ships carrying civilians and humanitarian aid to Palestinians in the Gaza Strip.

According to the allegations

In the early morning hours of 31 May 2010, Israeli armed forces forcibly boarded a convoy of ships, the so-called "Freedom Flotilla", organized by charity groups and human rights activists, and carrying civilians and humanitarian aid, while that convoy was in international waters. The convoy, which set out from Cyprus to Gaza, was composed of six ships, and reportedly sought to provide humanitarian aid to Palestinians in the Gaza Strip. It has been reported that three of the ships carried a total of about 600 civilians, including journalists and legislators and other civilians from a range of countries including Greece, Sweden Turkey, and the United Kingdom, and the United States. The other three ships primarily carried approximately 10,000 tonnes of humanitarian aid, including food, medical supplies and construction materials.

It has been reported that shortly after 9:00 p.m. local time, members of your Excellency's Government's armed forces told the captains of each of the boats that they were approaching a blockaded area and told them to return to their countries of origin or proceed to a port at Ashdod. Your Excellency's Government has reportedly asserted in advance that it might use limited force to prevent the "Freedom Flotilla" from breaking the economic blockade your Excellency's Government has imposed. According to accounts received, the leaders of the "Freedom Flotilla" refused to turn back, identified the individuals in the convoy as civilians providing humanitarian aid, and asked your Excellency's Government to refrain from using violence.

While the convoy was still in international waters, reports indicate that members of your Excellency's Government's armed forces landed on each of the ships, including by being lowered from helicopters. Reports indicate that when commandos landed on the largest ship, the Mavi Marmara, which carried the most civilians, they used firearms. There are also reports of injuries suffered by civilians on other ships. Accounts from your Excellency's Government assert that when Israeli armed forces landed on the ship, they were attacked by people wielding clubs and knives, who allegedly took two firearms from Israeli commandoes and used them, and that Israeli armed forces fired against civilians in self-defence. These accounts were rejected by Freedom Flotilla representatives. According to a statement issued by your Excellency's Government, armed forces "employed riot dispersal means, including live fire."

Nine members of the Freedom Flotilla, who are as yet unnamed, have reportedly been killed, and up to 60 others injured. Seven members of the Israeli armed forces were also injured.

At the time of this writing, your Excellency's Government has reportedly taken everyone in the "Freedom Flotilla" convoy into detention, restricted access to them, and there are no accounts from those in the convoy, including journalists, of the events that took place.

The "Freedom Flotilla" convoy was in international waters when it was raided by your Excellency's Government's armed forces, and the members of the convoy are all reported to be civilians. The matter is therefore governed by human rights law and I would refer Your Excellency's Government to its obligations reflected in a variety of international human rights instruments. Article 6 of the International Covenant on Civil and Political Rights, to which Israel is a party, provides that no one shall be arbitrarily deprived of his or her life. In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

I would also note the relevance in these circumstances of the UN Basic Principles on the Use of Force and Firearms by Law Officials. As the Basic Principles make clear, "law enforcement officials" include all government officials exercising "police powers", including "military authorities" and "security forces". Basic Principles, Preamble, Note. Principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "[w]hensoever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment [...]" In addition, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

I would also like to recall that there is "a duty on States to investigate alleged violations of the right to life "promptly, thoroughly and effectively through independent and impartial bodies" (Human Rights Committee, general comment No. 31, "Nature of the legal obligation on States Parties to the Covenant" (2004), (CCPR/C/21/Rev.1/Add.13), para. 15.) This duty arises out of the general obligation of States to ensure the right to life of each individual, a right that is non-derogable regardless of circumstance (ICCPR, art. 4(2)); see also Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Finally, I would like to note that families of the deceased should be informed about the investigation and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17). Moreover, the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time (Prevention and Investigation Principles, Principle 20).

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

1. Are the allegations in the above summary of the events accurate?
2. Please explain the legal justification for undertaking law enforcement operation against ships sailing in international waters.

3. Please explain how the armed forces' operation against the "Freedom Flotilla" complied with the human rights law limitation that law enforcement officials may only deprive individuals of the right to life in response to an imminent threat and in conformity with the principles of necessity and proportionality.
4. What instructions were given to the armed forces before and during the above mentioned operations? In particular, what instructions, if any, were given about the need to exercise restraint in the use of force? Were warnings issued before lethal force was used by the armed forces?
5. Please provide the details and results of any investigation or inquiries launched into the above incident.
6. Please provide details of the results of any autopsies conducted.
7. Will those injured by security forces and the family members of those killed be compensated? If so, please provide details of any compensatory scheme and mechanisms. If not, please explain why compensation will not be provided.

Excessive use of force by Israeli soldiers

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 1 male

Character of reply: Acknowledgement of receipt

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response from the Government.

Allegation letter dated 8 April 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding **the killing of Mr Fayez Ahmed Faraj**, a 41 year old Palestinian national who was allegedly shot dead by Israeli soldiers.

According to information received

On 12 February 2010, Mr Fayez Faraj was walking in the al-Sheik neighbourhood of Hebron, when about six to eight Israeli soldiers asked him to stop. According to eye witnesses, Mr. Fayez started arguing with the soldiers and one of them hit him with his rifle butt. Another soldier proceeded to open fire on the victim and shot him in his right leg. Mr. Fayaz Ahmed stood up and attempted to walk away, however when he was approximately three meters away the soldiers opened fire hitting him with a number of bullets.

Eye witnesses have reported that one of the soldiers stained his hand with the victim's blood and another took a knife from his pocket and threw it about a meter away from where the victim was lying. The soldiers took pictures of the knife near the victim and the surrounding area.

At about 16:30 hours, a Palestinian Red Crescent Society Ambulance arrived at the scene to assist the victim. At the time of arrival the victim was conscious of his surroundings, but unable to speak. The soldiers refused to allow the ambulance to take the victim to the hospital. After about ten minutes they were informed that they could take the victim to the hospital. However after the driver drove for approximately two meters he was stopped by

the soldiers. Two minutes later, four soldiers transferred the victim to an armoured military vehicle. The vehicle drove into the H2 Israeli security controlled area.

At about 17:40 hours, the Ambulance Emergency Centre received a call from an Israeli officer that an ambulance should go to the northern entrance of the city to collect the victims body. At about 17:45 hours, the ambulance collected the body of the deceased and transported him to the al-Ahli hospital. A medical examination that was conducted showed that the victim had four wounds in his stomach, one wound in the back, two wounds in the upper part of his right thigh which severed the femoral artery, one wound in his left hand and lacerations in the pelvic bone caused by shrapnel from exploding bullets.

Later in the day, an Israeli army spokesperson claimed that the deceased was shot after he had attempted to stab a soldier.

While I do not wish to prejudge the accuracy of the reports received, I would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. In particular, I would refer to the International Covenant on Civil and Political Rights ("ICCPR"), to which Israel is a party, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

With regard to the allegation that the deceased was unarmed at the time of the shooting, I would like to bring to the attention of your Excellency's Government 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). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

I have argued in detail in my report presented to the General Assembly at its sixty first session that 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. 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". (A/61/311, paras 41- 45).

I would like to bring to your Excellency's attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. The investigation of such cases "shall be thorough, prompt and impartial. ... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death." (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Prevention and Investigation Principles"). Further Principle 17 ("Prevention and Investigation Principles") provides that "[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on

findings of fact and on applicable law.” Further your Excellency’s Government must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7).

I urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the death of Mr. Fayeze Ahmed Faraj, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victim.

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

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

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the death of Mr. Fayeze Ahmed Faraj.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to Israeli Security Forces officers found responsible.

Please indicate whether compensation has been provided to the family of the victim.

Please indicate what broader steps, if any, are being taken to address unlawful use of force by the Israeli Security Forces.

Government reply dated 9 April 2010

I would like to acknowledge receipt of your letter dated 8 April 2010 regarding Mr. Fayeze Ahme. I have transferred your request to the appropriate authorities in Israel and will forward you any relevant information that I receive on this matter.

Jamaica

Excessive use of force

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 70 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the comprehensive response received from the Government of Jamaica. He welcomes the explanation of the Government on the events that transpired and measures being undertaken to address the allegations of excessive use of force.

Allegation letter dated 10 June 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency’s Government to information I have received regarding the deaths of at **least 70 civilians, allegedly killed between 23-26 May 2010**, in fighting between security forces and residents of Tivoli Gardens and Denham Town, Kingston, in the context of the attempted arrest of alleged criminal gang leader Christopher Coke.

According to reports I have received, witness testimony, together with the high number of civilian deaths, and the relatively low number of reported deaths of police and security forces (3 deaths) suggest many of the killings may have been extrajudicial executions. Because of the large number of deaths, I draw your Excellency's attention to three individuals in relation to whose killings I have received the most detailed information.

Witnesses state that Errol Spence, a 22-year-old, was unarmed and hiding for safety in "Building 27" with 16 other people when a soldier searched him and found no evidence that he had been shooting at police in the battle outside. Witnesses say he was shot four or five times by a police officer, and then his body and the shells from bullets used were promptly removed from the scene.

Witnesses have also alleged that the police shot and killed Mr. Martin Lindsay, 25, and Mr. Oshane Walker, 19, in the home of Ms. Jane McFarlane, Mr. Lindsay's mother. Before he died, Mr. Walker spoke to Ms. McFarlane on the phone, telling her that he had been shot in the back by police, and that Mr. Lindsay, already deceased, had been shot in the chest. Ms. McFarlane said neither young man was associated with Mr. Coke's criminal gang, nor were they involved in fighting the security forces.

These three cases are just a small number of the many deaths that require further investigation. The circumstances surrounding the deaths of the 70-plus civilians reportedly killed between 23-26 May 2010 have not yet been fully investigated. Reports I have received claim that witnesses saw police kill other unknown and unarmed persons without any due cause. Witnesses believe that some of the men were shot merely because their gender and age suggested to the police that they fit the profile of a gang member.

I have received information that the Office of the Public Defender is retaining independent forensic pathologists and radiologists to carry out investigations. I welcome this announcement. However, I have also received information that the Public Defender has claimed that forensic evidence from the scenes of such killings has already been destroyed – before the Government was able to conduct proper investigations, and before the Public Defender's independent forensic pathologist had an opportunity to conduct post-mortem examinations of bodies. One report I received claims that bodies were burned, but Kingston's Deputy Police Commissioner denied this. I have also been informed that most of the killing sites were first inspected and entered by representatives of the Scene of Crime Unit of the Jamaica Constabulary Force, but that in addition, forensic scientists from Caribbean Genetics at the University of the West Indies have visited 13 of 15 scenes in Tivoli Gardens.

The Ministry of National Security has identified 35 of the 70 or more dead, and the Government pathologist is reportedly ready to begin post-mortem examinations. However, at the time of writing, the independent pathologists invited by the Public Defender to conduct post-mortem inspections are yet to arrive and begin work.

While I do not wish to prejudice the accuracy of these allegations, I would like to refer your Excellency's Government to the relevant principles applicable to this case under international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities." Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved.

In addition, Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states that law enforcement officials are not to use “firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury... and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

In addition, Principle 1 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions states that “exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions [and that] [s]uch executions shall not be carried out under any circumstances...”

In this connection I would also like to recall Article 2 of the ICCPR which provides that each State Party must “ensure that any person whose rights or freedoms ... are violated shall have an effective remedy” and that “any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”

Furthermore, the Human Rights Committee’s General Recommendation 31 to the ICCPR notes that each State party must “take appropriate measures or ... exercise due diligence to prevent, punish, investigate or redress the harm caused by private persons or entities.” Principle 9 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions also calls for governments to conduct a “... thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions.”

I urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of the above-mentioned victims with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

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

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of the victims, including Mr. Errol Spence, Mr. Martin Lindsay, and Mr. Oshane Walker, and those of the more than 70 civilian deaths which were the result of police or security force killings. Did those investigations find that the use of force was lawful or otherwise?

Please provide the full details of any disciplinary action and prosecution undertaken with regard to the police officers, if any, found responsible for unlawful use of force.

Please indicate whether compensation has been provided to the families of Mr. Errol Spence, Mr. Martin Lindsay, and Mr. Oshane Walker, and those, if any, of the more than 70 civilians who were killed by police or security forces.

Please indicate what broader steps, if any, are being taken to address unlawful use of force by the police and to promote accountability.

Government replies of 11 June 2010, 18 June 2010 and 20 August 2010

11 June 2010

I write to acknowledge receipt of your letter of 10 June 2010, and to advise that it has been referred to the appropriate authorities in Jamaica. I shall communicate with you again as soon as I receive their response.

18 June 2010

I refer to your Allegations Letter dated 10 June 2010, requesting that the Government of Jamaica provide information on the circumstances of the death of civilians during the security operations in Tivoli Gardens and Denham Town in Kingston, from 23 to 26 May 2010.

The request has been brought to the attention of the relevant authorities in Jamaica and the Government wishes to provide an interim response to your communication at this time.

The Government of Jamaica stresses that the operation undertaken during the mentioned period was deemed necessary in order to respond to extraordinary challenges to the maintenance of law and order, to ensure the safety and security of citizens, and to facilitate the efforts to the security forces to combat criminal activity which had become a serious threat to institutions of the State.

The operation was precipitated by intelligence gathered by the security forces indicating that heavily armed men opposed to the decision to issue the authority to proceed with committal hearings from the extradition of Mr. Christopher Coke to stand trial in the United States on drugs and gun trafficking charges, were preparing to attack members of the security forces. Intelligence also indicated that criminal elements in other communities intended to launch attacks on the security forces. This was corroborated by the fact that several police stations in and outside of Kingston were attacked by armed men using guns and Molotov cocktails. Two police stations were set on fire and extensively damaged and two police officers were shot and killed.

It should be noted that improvised explosive devices, such as booby traps and bottle bombs, were used by criminals to fortify strategic points in the community to impede access by the security forces into the community.

On the basis of alleged witness testimony and the relatively low number of reported deaths of police and security forces, the conclusion seem to have been drawn that many of the killings, including the three individuals identified in your letter, may have been extrajudicial executions.

The Government has launched an extensive investigation into the military/police operations carried out during this period, including the circumstances of the civilian deaths. The Office of the Public Defender, an independent commission of Parliament charged with investigative powers on behalf of the citizens of Jamaica, has established an office in the area to receive complaints from persons who witnessed or experienced violations of fundamental rights on the part of the security forces. The Complaints Division, a unit of the Jamaica Constabulary Force established by an Act of Parliament, has also set up an office in the area of operation with a specific mandate to investigate complaints of residents against alleged breaches committed by police personnel.

Following identification of the victims, post-mortem examinations have commenced in the presence of the Public Defender and an independent pathologist from overseas is observing the proceedings.

In view of these actions, a response to the questions posed and the information requested on pages 3-4 of your letter would be premature at this time. You can be assured that the Government shall endeavour to provide the information within the stipulated period.

18 June 2010

I refer to your Allegations Letter dated 10 June 2010, requesting that the Government of Jamaica provide information on the circumstances of the death of civilians during the security operations in Tivolo Gardens and Denham Town in Kingston from 23 to 26 May 2010.

The request has been brought to the attention of the relevant authorities in Jamaica and the Government wishes to provide an interim response to your communication this time.

The Government of Jamaica stresses that the operation undertaken during the mentioned period was deemed necessary in order to respond to extraordinary challenges to the maintenance of law and order, to ensure the safety and security of citizens, and to facilitate the efforts of the security forces to combat criminal activity which had become a serious threat to institutions of the State.

The operation was precipitated by intelligence gathered by the security forces indicating that heavily armed men opposed to the decision to issue the authority to proceed with committal hearings for the extradition of Mr. Christopher Coke to stand trial in the United States on drugs and trafficking charges, were preparing to attack members of the security forces. Intelligence also indicated that criminal elements in other communities intended to launch attacks on the security forces. This was corroborated by the fact that several police stations in and outside of Kingston were attacked by armed men using guns and Molotov cocktails. Two police stations were set on fire and extensively damaged and two police officers were shot and killed.

It should be noted that improvised explosive devices, such as booby traps and bottle bombs, were used by criminals to fortify strategic points in the community to impede access by the security forces into the community.

On the basis of the alleged witness testimony and the relatively low number of reported deaths of police and security forces, the conclusion seem to have been drawn that many of the killings, including the three individuals identified in your letter, may have been extrajudicial executions.

The Government has launched an extensive investigation into the military/police operations carried out during this period, including the circumstances of the civilian deaths. The Office of the Public Defender, an independent commission of Parliament charged with investigative powers on behalf of the citizens of Jamaica, has established an office in the area to receive complaints from persons who witnessed or experienced violations of fundamental rights on the part of the security forces. The Complaints Division, a unit of the Jamaica Constabulary Force established by an Act of Parliament, has also set up an office in the area of operation with a specific mandate to investigate complaints of residents against alleged breaches committed by police personnel.

Following identification of the victims, post-mortem examinations have commenced in the presence of the Public Defender and an independent pathologist from overseas in observing the proceedings.

In view of these actions, a response to the questions posed and the information requested on pages 3-4 of your letter would be premature at this time. You can be assured that the Government shall endeavour to provide the information within the stipulated period.

20 August 2010

Response by the Government of Jamaica to the Allegation Letter from the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions with respect to the Security Operations in West Kingston, 23-26 May 2010

Background

On Sunday, 23 May 2010, the Government of Jamaica declared a State of Emergency for the parishes of Kingston and St Andrew. A period of public emergency is provided for under Section 26 of the Constitution when it is deemed, *inter alia*, that “action has been taken or is immediately threatened that would be of such a nature and so extensive that it would be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life.”

The decision to declare a state of emergency was taken on the advice of the security forces that actions by criminal elements posed a clear danger to public safety. The intelligence gathered by the security forces had indicated that heavily armed men (particularly in the areas of Tivoli Gardens and Denham Town within the corporate area) opposed to the decision to issue the authority to proceed with committal hearings for the extradition of Mr. Christopher Coke to stand trial in the United States on drugs and gun trafficking charges, were preparing to attack members of the security forces. In the days leading up to Sunday, several roads in West Kingston had been barricaded impeding the movement of pedestrians and vehicular traffic and normal police law enforcement operations.

Intelligence also indicated that criminal elements in other communities intended to launch attacks on the security forces in order to divert attention and resources from the focused operations that the situation in West Kingston required. This was corroborated by the fact that a number of police stations in and outside the capital were attacked by armed men using guns and Molotov cocktails. Two police stations were set on fire and extensively damaged and two police officers were shot and killed.

Improvised explosive devices, such as booby traps and bottle bombs, were used by criminals to fortify strategic points in the community to impede access by the security forces into the community.

The joint police/military operation undertaken in Tivoli Gardens and surrounding areas during the 23-26 May 2010 period was therefore deemed necessary in order to respond to extraordinary challenges to the maintenance of law and order, to ensure the safety and security of citizens, and to facilitate the efforts of the security forces to combat criminal activity which had become a serious threat to institutions of the State.

The security forces encountered sustained and sporadic gunfire. In the exchanges that ensued, seventy-three civilians and one member of the Jamaica Defence Force were killed. The Government of Jamaica deeply regrets the loss of lives especially those of members of the security forces and innocent, law-abiding citizens caught in the crossfire. The security forces were directed to take all practical steps to avoid casualties as much as possible and to uphold the rights of citizens innocently caught in the area of conflict.

In the aftermath of the security operation, over a hundred guns, including high-powered weapons, and several thousand rounds of ammunitions were seized in the area.

Allegation Letter from the Special Rapporteur

By letter dated 10 June 2010, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions referred to information “received regarding the deaths of at least 70 civilians, allegedly killed between 23-26 May 2010, in fighting between security forces and residents of Tivoli Gardens and Denham Town, Kingston, in the context of the attempted arrest of alleged criminal gang leader Christopher Coke.”

The Special Rapporteur asserted that on the basis of reports received, and witness testimony, together with the high number of civilian deaths, and the relatively low number of reported deaths of police and security forces, many of the killings may have been extrajudicial killings. Attention was drawn to three individuals (Errol Spence, 22; Martin

Lindsay, 25; and Oshane Walker, 19) in relation to whose killings the Special Rapporteur further states that reports he had received “claim that witnesses saw police kill other unknown and unarmed persons without any due cause. Witnesses believe that some of the men were shot merely because their gender and age suggested to the police that they fit the profile of a gang member.”

The Special Rapporteur indicated, *inter alia*, that he had received information that the Office of the Public Defender had claimed that forensic evidence from the scenes of the killings had been destroyed before the Government was able to conduct proper investigations and before the Public Defender’s independent forensic pathologist had an opportunity to conduct post-mortem examinations of bodies.

The Special Rapporteur referred to the International Covenant on Civil and Political Rights (ICCPR) which provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. He further refers, *inter alia*, to the General Comment of the Human Rights Committee on Article 6 of the ICCPR which observes that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.

The Special Rapporteur requested the Government’s observations on the accuracy of the summary of the case; details of the investigation, and judicial or other inquiries in relation to the deaths of the victims; details of disciplinary action and prosecution in relation to the unlawful use of force by the police; compensation to the families of the individuals killed by the police force; and the broader steps taken to address the unlawful use of force by the police.

By letter dated 18 June 2010, the Government of Jamaica provided an interim response to the Special Rapporteur’s allegation letter. That communication highlighted the background to the operations by the security information on the investigation launched into the police/military operations, including the circumstances of the civilian death.

The following is submitted in response to the specific questions raised by the Special Rapporteur.

Are the facts alleged in the summary of the case provided in the letter accurate?

Investigations are continuing with respect to the joint police/military operation in West Kingston and the circumstances of the deaths of the civilians. Unless otherwise specifically stated herein, the Government of Jamaica is therefore not in a position to address at this time the accuracy of the assertions made by the Special Rapporteur.

It is important that in his assessment of the security operation, the Special Rapporteur take account of the background to the security operation as described above. It is erroneous to describe the operation undertaken between 23 and 26 May as “fighting between security forces and the residents of Tivoli and Denham Town”.

It can be confirmed that post-mortem examinations have been completed on all the victims. The post-mortem examinations were conducted in the presence of Public Defender and four independent pathologists from overseas. With respect to claims that bodies were burned, these allegations have been refuted by the relevant authorities.

With respect to the individuals identified in the allegation letter, on the basis of its records and investigations conducted so far, the following information is provided:

Errol Spence – Only one witness statement exists with respect to the death of Errol Spence. This statement contains allegations that he was shot and killed by a member of the security forces. On examination, one bullet fragment was recovered from his body and it was concluded that the cause of death was due to gunshot wound to head and chest.

Martin Lindsay and Oshane Walker – Both died at 11 Wilton Hill Drive, Tivoli Gardens, Kingston 14. On examination, four bullet fragments were taken from the body of Mr. Lindsay, and it was concluded that his death was caused by a gunshot wound to the chest. In the case of Mr. Walker, six bullet fragments were retrieved, and it was concluded that his death was caused by a gunshot wound to the head. There is no evidence at this time to indicate who shot either of these persons.

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of the victims, including Mr. Errol Spence, Mr. Martin Lindsay, and Mr. Oshane Walker, and those of the more than 70 civilian deaths which were the result of police or security force killings. Did those investigations find that the use of force was lawful or otherwise?

As noted in the interim letter to the Special Rapporteur, it appears that the Special Rapporteur has drawn the conclusion that all the civilian deaths were the result of police or security force killing. Investigations are ongoing, therefore it is inappropriate to make this assertion.

Following the operations, the Government launched an extensive investigation into the military/police operations carried out during this period, including the circumstances of the civilian deaths. Investigations have been conducted since 25 May 2010, under the purview of the Bureau of Special Investigations of the Jamaican Constabulary Force, in order to determine whether any member of the security forces was responsible for any of the deaths, and if force, where used, was unlawful.

Consistent with its obligations to protect the rights of the citizens in the affected areas, the Government facilitated a number of actions to ensure that the allegations of unlawful use of force by the security forces were addressed so that the perpetrators could be held accountable. The Public Defender, the independent commission of Parliament charged with investigative powers on behalf of the citizens of Jamaica, was invited to visit the area. The Head of the Jamaica Red Cross, Representatives of the International Committee of the Red Cross as well as the Political ombudsman also visited the area.

Other measures put in place included

The establishment of a unit of the Office of the Public Defender in West Kingston to receive complaints from persons who witnessed or experienced violations of fundamental rights on the part of the security forces.

The Complaints Division, a unit of the Jamaica Constabulary Force established by an Act of Parliament, also set up an office in the area of operation with a specific mandate to investigate complaints of residents against alleged breaches committed by police personnel.

To ensure maximum transparency and to allow independent analysis of the conduct of the joint police/military operation, the media was allowed access to the affected communities as soon as it was safe to do so on Wednesday May 27, 2010. The media conducted interviews of residents who were free to discuss any alleged violation of their fundamental rights.

With respect to Mr. Spence, Mr. Lindsay and Mr. Walker, all three bodies were X-rayed, photographed, fingerprinted and a full description taken of each. Additionally, they were autopsied by two local pathologists in the presence of four foreign pathologists who participated in the exercise. The results of the autopsies were indicated in Point 1 above.

On the basis of the allegations of the unlawful execution of Mr. Errol Spence, further investigations were carried out by the personnel of the Scenes of Crime Unit at “Ground Zero 17” within Tivoli Gardens, where the killing was said to have taken place. No spent shells were, however, found in the area despite the allegation. Additionally, the statement

obtained from the witness points to the fact that she will not be able to identify the policeman if seen again. In the absence of a definitive eye witness testimony or forensic evidence, it will be difficult to determine conclusively if the death was caused by the use of unlawful force by a member of the security forces.

With respect to Mr. Lindsay and Mr. Spencer, the sole witness to their deaths has refused to give a statement to the authorities, making it difficult to determine at this stage whether the death was the result of the use of unlawful force by a member of the security forces.

In view of the fact that investigations into the deaths of the civilians are still being carried out by the Bureau of Special Investigations, and the fact that illegal firearms were recovered from criminal elements in the Tivoli Gardens area, it would be premature to give any indication at this stage whether any member of the security forces acted improperly during the operation. The Special Rapporteur will be advised of the outcome of these investigations in due course.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to the police officers, if any, found responsible for unlawful use of force.

Investigations are still ongoing into the circumstances of the deaths of the civilians and no member of the security forces has been found responsible for unlawful use of force. As such, no decision has been taken with respect to disciplinary actions. The results of the investigations will be forwarded to the Director of Public Prosecutions, who will determine whether unlawful force was used and, if this is the case, the applicable disciplinary action and prosecution against officers found responsible. The Special Rapporteur will be advised of such action.

Please indicate whether compensation has been provided to the families of Mr. Errol Spence, Mr. Martin Lindsay, and Mr. Oshane Walker, and those, if any, of the more than 70 civilians who were killed by police or security forces.

Given the status of current investigations and since it cannot be determined at this stage the circumstances of their deaths, and whether the security forces used unlawful force, it is not possible to indicate whether compensation will be granted to any of the families of those civilians who were killed during the security operations in May 2010.

So far, only two claims have been brought against the Government by individuals who are alleged to have suffered as a result of the Tivoli Gardens operation. One has been brought by the mother of one of the deceased who is claiming damages for the alleged wrongful execution of her son. Another has been brought by an individual who is claiming damage to her property and personal injury. These matters are in their preliminary stages.

Please indicate what broader steps, if any, are being taken to address unlawful use of force by the police and to promote accountability.

The Government of Jamaica reiterates its commitment to fulfilling its obligations under the International Covenant on Civil and Political Rights (ICCPR), particularly with respect to ensuring that its citizens enjoy an unimpeded right to life, pursuant to Article 6 of the ICCPR. In this regard, the Government of Jamaica strongly condemns any criminal act which leads to the deprivation of life, including any arbitrary killing of a person by a member of the security forces.

The Government is committed to taking as many preventative measures as are possible to prevent breaches to the right to life by the security forces, and is further committed to issuing the appropriate punishment for those responsible for such acts. The Government is also committed to providing the most appropriate remedy (including compensation) to individuals who have suffered as a result of any breach to the right to life of any of its citizens, pursuant to Jamaica's obligations under the ICCPR.

Prior to the operation, all members of the security forces were briefed on the rule of law (including the protection of Human Rights), as well as the Force's policy on the "use of force". Throughout the operation, all personnel of the security forces were constantly reminded of their obligations to act professionally and to respect and uphold the rights of all residents in the area of operation. Senior members of the security forces were also in the area of operations to ensure that their subordinates acted professionally and within the ambit of the law.

To address any circumstance of the abuse of power by the State, for instance where it is alleged that unlawful force is used by the Government's security forces, the Office of the Public Defender (OPD), an independent commission of Parliament was established in 2000. The OPD is charged with investigative powers where there is any alleged injustice or infringement of a citizen's constitutional rights by the State. In this regard, as previously mentioned, the Public Defender was invited to visit the area of the security operations in May to conduct an independent assessment. Additionally, a unit of the OPD was established in West Kingston in order to allow residents easy access to the office in order to make complaints of violations of their fundamental rights. Persons who witnessed or experienced excesses on the part of the security forces have been invited to make complaints to the Public Defender to facilitate investigations.

Emphasis is also being placed on enhancing the training being offered to security personnel, with a special focus on the fundamentals of ethics, use of force and human rights. Since September 2009, a total of 3,064 frontline officers across the Jamaica Constabulary Force have been exposed to training in this regards. The training projection for May to December 2010 is 2,304 frontline officers. Training in the area of human rights is provided in collaboration with NGOs such as the Jamaica Independent Council for Human Rights, Amnesty International and Jamaicans for Justice. Human rights are also thematic to all areas of firearm training. The overall objective is to reduce the number of complaints of police excesses and restore public confidence in and support for the police.

Since May, the Jamaica Defence Force has put in place revised rules of engagement, which focuses on further reducing the chances of civilian deaths when members of the JDF carry out their operations. The necessary changes to the training system were made so that the conduct of the members of the JDF will be more in line with the rules within which they must operate, ensuring that the members conduct is in keeping with the professionalism and integrity of the organization. These changes include the installation of state-of-the-art firearm training simulators, which provide soldiers with computer-generated real life scenarios in which they are required to make rules-of-engagement decisions in a simulate environment. Soldiers will also carry copies of their rules of engagement on their person-rules with which they are expected to be conversant at all times.

In March 2010, Parliament passed the landmark Independent Commission of Investigations Act establishing the Independent Commission of Investigations (INDECOM), which takes power from the police to investigate themselves. Following the appointment of a Commissioner at the end of July, INDECOM formally began operation on 14 August. A commission of Parliament, INDECOM has sole responsibility for investigations concerning actions by members of the security forces and other agents of the state that result in death or injury to persons or the abuse of the rights of persons. INDECOM has thus assumed the role and functions of the Police Bureau of Special Investigation, which had been tasked with investigating cases of police shootings and allegations of corruption by agents of the state.

Kenya

Excessive use of force by police officers

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 5 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 3 February 2011, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to bring the attention of your Excellency's Government information I have received concerning allegations of several deaths as a result of use of force by police officers.

According to information received

(a) On 28 December 2010, two brothers, Mr. **John Kamuri**, aged 26, and Mr. **Peter Irungu**, aged 24, a motor vehicle mechanic and a market trader, respectively, boarded a minibus, registration number KBK 334J, taking the Nairobi route from the Kahuro Market in Central Province. During the journey, a dispute arose between the two men and the minibus driver which escalated into a physical fight. A relative of the brothers, who was on the bus, intervened in the dispute. The driver of the vehicle later made a phone call to people alleged to be police officers. When the minibus reached Ruiru, about 25 Kilometers outside Nairobi, two people, who identified themselves as police officers, arrested and assaulted Mr. Kamuri and Mr. Irungu.

On 29 December 2010, the relatives of the two men went to several police stations in the Nairobi area, looking for the two men but were unable to locate them. The relatives located the vehicle from which the brothers were arrested and asked the minibus crew for any information about the men. The minibus crew phoned one of the police officers who had arrested Mr. Kamuri and Mr. Irungu. The officer was allegedly a member of the "Rhino Squad", a special unit of the Kenya Police. The officer subsequently assaulted the relative who made the inquiry, and arrested and charged him with extortion at Makadara Magistrates court on 30 December 2010. He was later granted bail. On 30 December 2010, the bodies of Mr. Kamuri and Mr. Irungu were found in Ruiru, a few kilometers from where they were arrested, with apparent gunshot wounds. The autopsies undertaken by the family of the victims was conducted on 12 January 2011 in Nairobi and revealed that the victims had died as a result of multiple gunshot wounds to the head and chest.

(b) On 19 January 2011, three men were killed at close blank range by plain clothes police officers on the Nairobi highway. According to information received, during a traffic jam police officers disembarked from their car on Lang'ata road, Nairobi and aimed guns at the three men who were in the car ahead of them. The three men were ordered from their car. While holding their hands up it is alleged that the police opened fire, killing them. It was later reported that the men were killed in a shoot-out with the police officers. However, eye witnesses indicated that the three men had surrendered to the police.

I am informed that three police officers have been suspended in connection with the killings pending an investigation.

While I do not wish to prejudice the accuracy of these allegations, I would like to refer your Excellency's Government to the relevant principles applicable to this case under international law. The International Covenant on Civil and Political Rights (ICCPR), which your Excellency's Government acceded to on 1 May 1972, provides under Article 6 (1) that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". In its General Comment on Article 6, the Human Rights Committee has observed that "States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces."

I am concerned with reports that the victims were shot without provocation. I would like to bring to the attention of your Excellency's Government that under international law use of force by the police is strictly circumscribed. The United Nations Basic Principles on the Use of Force and Firearms by Law Officials, in particular Principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." The Code of Conduct for Law Enforcement Officials provides under Article 3 that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

I welcome the measures taken by your Excellency's Government to suspend the three officers in connection with the killings which occurred at the Lang'ata road. I would like to draw the attention of your Excellency's Government to the fact that international law requires that in cases of allegations of violation of the right to life there should be investigations that are effective, comprehensive and independent as well as prompt and transparent. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular Principle 9 states that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". This principle was reiterated by the Human Rights Council in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

I urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of the above-mentioned victims with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

1. Are the facts alleged in the above summaries accurate?
2. Please provide the full details of any investigations, and where appropriate disciplinary action and prosecution undertaken with regard to the police officers involved.

3. Please indicate whether compensation will be provided to the families of the victims.
4. Please indicate what broader steps, if any, are being taken to address unlawful use of force by the police accountability and to prevent recurrence of such acts.

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

Reprisals for cooperating with the special procedure mechanism

Violation alleged: Reprisals for cooperating with the special procedure mechanisms

Subject(s) of appeal: 1male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 30 April 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Government to information we have received 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.

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.

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.

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.

Mr. Keneth Kirimi was found on 25 April 2010, at Suswa market, reportedly in serious physical condition and is currently undergoing medical treatment.

Concern is 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 is expressed regarding the physical and psychological integrity of Mr. Kirimi.

Further concern is 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.

While we do not wish to prejudge the accuracy of these allegations, we would like to recall the relevant provision of the Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights (E/CN.4/1998/45, Appendix 5):

“During fact-finding missions, special rapporteurs or representatives of the Commission on Human Rights [...] should be given the following guarantees and facilities by the Government that invited them to visit its country:

(c) Assurance by the Government that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings”.

Similarly, in its resolution 12/2, the Human Rights Council urged Governments to prevent and refrain from all acts of intimidation or reprisal against those who avail or have availed themselves of procedures established under the auspices of the United Nations for the protection of human rights and fundamental freedoms, and all those who have provided legal or other assistance to them for this purpose.

We urge your Government to take, without any further delay, all necessary measures to guarantee that all forms of violence, threats, retaliation, pressure or any other arbitrary action against the persons who have been in contact with the Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as against all other human rights defenders in Kenya, cease immediately. We would suggest that this requires both clear instructions to all security forces and other relevant authorities and vigorous public statements of condemnation for such violence and intimidation by the highest levels of Government.

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

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

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

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

In this context, we would like to draw your Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw your Government's attention to paragraph 7 (b) of Resolution 8/8 of the Human Rights Council, which stated that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture.

We would also like to appeal to your 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."

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Keneth Kirimi are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

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

4. Please provide the full details of any prosecutions which have been undertaken against persons accused of acts against the human rights defenders. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please provide information on the measures taken to put an end to all forms of violence, intimidation and harassment against human rights defenders, particularly those who have cooperated with the Special Rapporteur on extrajudicial, arbitrary or summary executions.

Excessive use of force by police officials

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 7 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 6 April 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Government to information I have received regarding the killing of seven taxi drivers on 11 March 2010 in Nairobi's Kawangware Estate.

According to information received

On 11 March 2010 Mr. Harry Thuku, Mr. Joseph Ngugi, Mr. Mugweri Mwangi, Mr. Gedion Mbogo, Mr. William Gitonga, Mr. Joseph Nganga and Mr. Maina were shot dead by Administration Police in the early hours of the morning.

According to reports, the police initially claimed that the men were members of the Mungiki sect, and that they had been terrorizing local residents. According to police accounts, the police shot at the men when they refused to surrender. Other reports, however, claim that the seven men were unarmed taxi drivers with no links to criminal activities. Local residents held demonstrations to protest the killings, which they alleged were unprovoked incidents of police violence.

Prime Minister Raila Odinga has since stated that there will be a thorough investigation into the case, and that those found responsible will be prosecuted.

These killings are of particular concern as they appear to be consistent with a broader pattern of extrajudicial executions by police in Kenya of suspected criminals and others. During my mission to Kenya in February 2009 (A/HRC/11/2/Add.6), I found credible evidence of extensive unlawful killings by the police. This included compelling evidence that death squads - including the so-called *Kwekwe* - exist within the police force in Kenya, and that these squads were set-up to eliminate the Mungiki and other high-profile suspected criminals.

While I do not wish to prejudice the accuracy of these allegations, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and

that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed “that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.” Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved.

According to Principle 9 of the Basic Principles on the Use of Firearms by Law Enforcement Officials, lethal force may only be used when strictly unavoidable in order to protect life. Principle 7 states that the arbitrary or abusive use of firearms by law enforcement officials must be punished as a criminal offense.

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

I urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of Mr. Harry Thuku, Mr. Joseph Ngugi, Mr. Mugweri Mwangi, Mr. Gedion Mbogo, Mr. William Gitonga, Mr. Joseph Nganga and Mr. Maina with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

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

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of the Mr. Harry Thuku, Mr. Joseph Ngugi, Mr. Mugweri Mwangi, Mr. Gedion Mbogo, Mr. William Gitonga, Mr. Joseph Nganga and Mr. Maina.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to police officers found responsible.

Please indicate whether compensation has been provided to the families of the victims.

Please indicate what broader steps, if any, are being taken to address unlawful use of force by police.

Kyrgyz Republic

Accountability procedures for widespread ethnic violence

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: Group concern

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 16 March 2011, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Independent Expert on Minority Issues; and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received 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.

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.

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 your Excellency's Government on 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.

While acknowledging receipt of replies sent by your Excellency's Government dated 22 July 2010, 21 August 2010, 5 and 6 October 2010, 2 November 2010, and 16 December 2010, we are still awaiting a response to the communications dated 15 September 2010 and 25 October 2010.

The summary below is divided into three parts: a general part (I); specific cases brought to our attention concerning the conduct of criminal proceedings (II); and new information concerning Mr. Askarov and his co-defendants (III).

I-

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

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.

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.

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.

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.

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.

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

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

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.

II-

The following cases relating to the conduct of criminal trials have been brought to our attention:

1.

On 5 November 2010, Jalal-Abad City Court convicted two ethnic Kyrgyz men of murder of two ethnic Uzbek civilians ethnic 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.

2.

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.

We are 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.

3.

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.

We are 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.

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.

4.

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.

III-

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:

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.

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.

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.

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."

Concern is 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.

While we do not wish to prejudge the accuracy of these allegations, we wish to share our serious concerns at the situation of the above-mentioned people, and in particular those facing charges in relation to the June 2010 events and to draw the attention of your Excellency's Government to the relevant international norms and principles applicable to these cases.

We are concerned at the number of reported deaths and wish to stress that everyone has the right to life and security of the person as set forth in article 3 of the Universal Declaration of Human Rights (UDHR) and article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which affirms that "no one shall be arbitrarily deprived of his or her life."

While we welcome the establishment of the National Commission of Inquiry to investigate into the June 2010 violence and the publication of its findings in January 2011, we are concerned at allegations of its lack of impartiality and competence. In this regard, we wish to stress that "members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals" as required by paragraph 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (adopted by Economic and Social Council resolution 1989/65 of 24 May 1989).

We are further concerned at allegations that criminal investigations and trials have been mainly conducted against ethnic Uzbeks, although official figures indicate that they were the main victims of ethnic violence. In this regard, we wish to recall the States' duty "to conduct thorough, prompt and impartial investigations into all suspected cases of extra-legal, arbitrary and summary executions" and to ensure that persons identified by the investigation as having participated in [such] executions ... are brought to justice" (Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, paras. 9 and 18). Governments shall also make every effort to prevent the recurrence of such acts as required by principle 8.

Families of victims of extrajudicial, summary or arbitrary executions shall also have an equal right to an effective remedy as stated in article 3 of the ICCPR in connection with

article 2(1) ICCPR, and reiterated in principle 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which stipulates that victims “are entitled to access to the mechanisms of justice and prompt redress ... for the harm that they have suffered” (General Assembly resolution 40/34 of 29 November 1985). In addition, they “shall be entitled to fair and adequate compensation within a reasonable period of time”, as required by principle 20 of the aforementioned Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

We wish to further stress that everyone has an equal right to justice and fair trial. In this regard, we refer your Excellency’s Government to article 10 of the UDHR and to article 14 of the ICCPR to which the Republic of Kyrgyzstan is a State Party, in particular to:

- para. 14(1) which states that “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” This provision should be read in conjunction with the principle of non-discrimination as set forth in article 2 (1) of the ICCPR;

- para. 14(3) which stipulates that “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (...) (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

Similarly, principle 5 of the Bangalore Principles of Judicial Conduct (the Bangalore Draft Code of Judicial Conduct of 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, on 25-26 November 2002) provides that “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office” and principle 5.2 states that “A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.”

Furthermore, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases mentioned above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context and in relation to the allegations of torture and ill-treatment by law enforcement officers, we would like to draw your Excellency’s Government’s attention to paragraph 1 of Human Rights Council Resolution 8/8 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

Concerning the allegations according to which confessions made under duress and torture were admitted as evidence in judicial proceedings, we would like to draw your Excellency’s Government’s attention to article 15 of the Convention against Torture which provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the

statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in article 7 of the ICCPR. In addition, we wish to draw the attention of your Excellency’s Government to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Principle 16 states that “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”

With respect to the allegation indicating that no investigation into the allegations of torture has been initiated, we would like to draw your Excellency’s Government’s attention to article 12 of the Convention against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. I would also like to draw your Excellency’s Government’s attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States “To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture.”

We would also like to draw your Excellency’s Government’s attention to paragraph 7 (b) of Resolution 8/8 of the Human Rights Council, which stated that “Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture.”

In this regard and in particular in relation to the alleged threats against lawyers, we wish to draw the attention of your Excellency’s Government to the Basic Principles on the Role of Lawyers, above-mentioned, in particular to:

- principle 16 which states that “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”
- principle 17 which provides that the authorities shall adequately safeguard the security of lawyers, where it is threatened as a result of discharging their functions, and
- principle 18 which provides that “Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”

Concerning the lack of confidentiality reported by lawyers, we wish to refer your Excellency’s Government to the paragraph 22 of the aforementioned Basic Principles on the Role of Lawyers, which requires that “Governments shall recognize and respect that all

communications and consultations between lawyers and their clients within their professional relationship are confidential.”

With respect to the allegations above, we would like to refer to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to which the Kyrgyz Republic is a party. In particular we would like to recall its obligations under article 5 of ICERD, which requires that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) the right to equal treatment before the tribunals and all other organs administering justice; (b) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”.

Furthermore, in view of the apparent disproportionate application of criminal proceedings as well as reported ill-treatment against ethnic minority Uzbeks, we draw the attention of your Excellency’s Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 4 of the Declaration requires that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

Concerning the specific allegations that Mr. Askarov has limited access to his lawyer in private, undermining thereby his capacity to prepare his defence, we wish to refer your Excellency’s Government to article 14.3(b) of the ICCPR, which establishes that in the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. Similarly, paragraph 8 of the Basic Principles of the Role of Lawyers that “all ... detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

Regarding the allegation that the conviction of Mr. Askarov may be related to his peaceful activities as a human rights defender, in particular monitoring and recording the violence related to the recent ethnic violence in Jalal-Abad Province, we would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the 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.”

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

With regard to the role of human rights defenders in monitoring demonstrations, we would like to refer to the Guidelines on Freedom of Peaceful Assembly of the Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe (OSCE), available at:

www.osce.org/odihr/item_11_23835.html, and to the 2007 report to the General Assembly (of the Special Representative of the Secretary-General on the situation of human rights defenders) (A/62/225, paras. 91 and 93) that underline how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly.

We urge your Excellency’s Government to take all necessary measures to safeguard the fundamental rights and freedoms of the persons mentioned above, including the rights of persons suspected or accused of criminal charges in relation to the June 2010 events to a fair trial before an independent and impartial tribunal, and their right to equal access and treatment before the court. We further urge your Excellency’s Government to take all necessary measures to ensure their security and safety as well as that of their lawyers, and to safeguard the physical and mental integrity of the persons mentioned above. In the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured and victims should be granted adequate compensation.

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

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

1. Are the facts alleged in the above summary of the case accurate?
2. Have any complaints been lodged by or on behalf of the alleged victims (the defendants) or their families? In that case, please indicate whether and how they have been addressed. If not, please explain why.
3. Please provide detailed information on the respective composition and mandate of the National Commission of Inquiry, and the Parliamentary Commission. Please also explain to what extent they comply with the requirements of independence and impartiality as contained inter alia in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which have been undertaken in relation to these cases. Have any penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please explain how criminal trials conducted in relation to the June 2010 violence are compatible with the requirements of articles 9 and 14 of the ICCPR, in particular the right to a fair trial before an independent and impartial tribunal, the defendants’ rights to

have access to a lawyer in private and the right to have adequate time and facilities to prepare their defence. .

7. Please indicate what measures are taken to ensure the right of all persons to be equal before the courts and to their equal treatment in the access to justice as set forth in article 14(3) of the ICCPR read in connection with article 2(1) of the ICCPR.

8. Please provide information on the measures undertaken to ensure that any statements or confessions obtained under torture is excluded from judicial proceedings.

9. Please provide information on the measures taken to ensure the rights of victims of the alleged violations or their families to an effective remedy and to adequate compensation.

10. Please provide information on the measures taken to guarantee the safety of lawyers, defendants and witnesses.

11. Please indicate what measures are put in place to address the climate of insecurity reported in the south of the Kyrgyz Republic, in particular in Osh and Jalal-Abad Provinces.

Kyrgyz Republic

Widespread post-electoral violence

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: Group concern (78 identifiable individuals)

Character of reply: Translation awaited

Observations of the Special Rapporteur

The Government of Kyrgyzstan replied to the communication below on 26 May 2011. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report.

Allegation letter dated 16 April 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the deaths of at least 78 individuals killed on 7 April 2010 in fighting between security forces and demonstrators, in the context of the overthrow of President Bakiyev.

According to reports I have received, thousands of protesters demonstrated in front of the presidential office in Bishkek on 7 April 2010. Protests had broken out the day before in Talas after an opposition leader was arrested by the police. The day had been planned as a day of national protest by the political opposition. Protesters seized control of the main government building where, according to reports, at least 11 political opposition leaders were detained, but were later released. According to information received, the police tried to disperse the protesters by using live ammunition, tear gas and stun grenades against the crowd. Reports have indicated that the deposed President's brothers gave orders to police officers to open fire on the demonstrators. Estimates of the number killed range from 78 to over 100.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed “that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.” Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. In addition, Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states that law enforcement officials are not to use “firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury... and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

In addition, Principle 1 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions states that “exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions [and that] [s]uch executions shall not be carried out under any circumstances...”

In the context of assemblies and the policing of demonstrations, Principle 12 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials that “everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, [and that] Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.” The latter state that in the “dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary” and that “in the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.” When law enforcement officials use firearms in such cases, it shall only be under the conditions stipulated in Principle 9.

In this connection I would also like to recall Article 2 of the ICCPR which provides that each State Party must “ensure that any person whose rights or freedoms ... are violated shall have an effective remedy” and that “any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.” Furthermore, the Human Rights Committee’s General Recommendation 31 to the ICCPR notes that each State party must “take appropriate measures or ... exercise due diligence to prevent, punish, investigate or redress the harm caused by private persons or entities.” Principle 9 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions also calls for governments to conduct a “... thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions.”

I urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of the above-mentioned victims with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

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

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of the victims. Did those investigations find that the use of force was lawful or otherwise?

Please provide the full details of any disciplinary action and prosecution undertaken with regard to the police officers, if any, found responsible.

Please indicate whether compensation has been provided to the family of the victims.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

Government reply dated 26 April 2010

Information concerning the protests which occurred in Kyrgyzstan on 7 and 8 April 2010

On 8 April 2010, the Procurator General of the Kyrgyz Republic initiated criminal proceedings on the basis of evidence of an offence contrary to article 305, paragraph 2 (improper exercise of authority) and article 97, paragraph 2 (murder) of the Kyrgyz Criminal Code, that is to say in connection with the mass killing attendant upon the improper exercise of authority which took place on 7 April 2010.

A preliminary investigation established that on 7 April 2010, with the agreement of the former President of the Kyrgyz Republic, K. Bakiev, the former Prime Minister D. Usenov and former leaders of the military, police and security forces and on the basis of an order from the head of the State Guard Service, Z. Bakiev, who was in general charge of the personnel of the Kyrgyz State Guard Service guarding Government House, of the special "Alpha" subdivisions of the State National Security Service and of the Scorpion battalion of the Ministry of Defence, firearms were used against participants in a meeting taking place near a building in the grounds of Government House.

As a result of the execution of the unlawful order from the former head of the State Guard Service, Z. Bakiev, regarding the use of firearms by personnel of the State Guard Service, the State National Security Service and the Ministry of Defence against participants in the meeting, 85 persons were killed and more than 255 persons sustained gunshot wounds and physical injuries.

In the course of investigations, 10 persons were charged with the above-mentioned offences under articles 305, paragraph 2, and 97, paragraph 2:

1. The former Prime Minister, D. Usenov, has been charged in his absence and a search warrant has been issued;
2. The President's former State adviser on defence, security and law and order, E. Satubaldiev, has been charged and the preventive measure has been taken of placing him under house arrest;
3. The former presidential Chief of Staff, K. Zhoroiev, has been charged. Initially, as a preventive measure, he was held in custody in the remand centre of the State National Security Service but, by a decision of the Bishkek City Court, this preventive measure was converted into house arrest;

4. The former head of the State Guard Service, Z. Bakiev, has been charged in his absence and a search warrant for him has been issued;

5. The former head of the State National Security Service, M. Sutalinov, has been charged in his absence and a search warrant for him has been issued;

6. The former Minister of Defence, B. Kaluev, has been charged and, as a preventive measure, he had been taken into custody in the remand centre of the State National Security Service;

7. The former Minister of Internal Affairs, M. Kongantiev, has been charged. Initially, as a preventive measure, he was taken into custody in the remand centre of the State National Security Service, but in view of his state of health and need for treatment, the Bishkek City Court converted this measure into house arrest. At the moment, M. Kongantiev is receiving treatment in the Russian Federation;

8. The former assistant of the head of the State National Security Service, M. Bakiev, has been charged in his absence and a search warrant for him has been issued;

9. The former deputy head of the State Guard Service, N. Temirbaev, has been charged in his absence and a search warrant for him has been issued;

10. The former deputy head of the State Guard Service, D. Dunganov, has been charged and, as a preventive measure, has been taken into custody in the remand centre of the State National Security Service.

Libyan Arab Jamahiriya

Excessive use of force against protestors

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: Group concern (233 identifiable people)

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 23 February 2011, sent with the Chair-Rapporteur of 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 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.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received 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.

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 protestors, causing several deaths and leaving many injured, most of whom showed gunshot wounds in the head, neck and shoulders.

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.

We 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.

In addition, the following cases of arrests of human rights defenders and activists, including their family members, have been brought to our attention:

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.

We 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.

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.

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.

Concerns are 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 is expressed that many of the violations that are taking place in connection with the demonstrations cannot or are not being reported.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to ensure that the rights and freedoms of the peaceful demonstrators are guaranteed in compliance with the international obligations entered into by the Socialist People's Libyan Arab Jamahiriya.

We are concerned with the reports of excessive use of force which has led to the loss of life. We would like to emphasize that protection of the right to life is absolute and permits no derogation (article 4 of the International Covenant on Civil and Political Rights (ICCPR), which your Excellency's Government acceded to on 15 May 1970). Further, article 6 provides that "No one shall be arbitrarily deprived of his life". We are concerned with reports that live ammunition is being used on peaceful demonstrators. The deprivation of life in circumstances where the killing is intentional, without warning and disproportionate to the requirements of law enforcement has been deemed to be tantamount arbitrary deprivation of life by the Human Rights Committee (*de Guerrero v. Colombia* Communication No. R. 11/45).

Under international law, the use of excessive force and firearms is not permitted when policing peaceful assemblies. We would like to remind your Excellency's Government of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in particular principle 12 which provides that "everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14." Principle 13 states that "In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary" and principle 14 states that "In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in Principle 9".

We would also like to draw your Excellency's Government's attention to principle 4 of the Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, principle 5 provides that "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment". (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Similarly, the attention of your Excellency's Government is drawn to Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to

implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

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

Concerning the allegations that the fate and whereabouts of four persons after their detention are unknown, we would like to bring to your Excellency’s Government’s attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which sets out necessary protection by the State, including in:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance);
- article 7 (no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances);
- article 9 (right to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty);
- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest); and
- article 12 (right to the maintenance in every place of detention of official up-to-date registers of all detained persons).

In connection to the allegation that some of the subjects of this letter are being detained in an undisclosed location and whose fate and whereabouts are unknown, we draw the attention of your Excellency’s Government to paragraph 7c of the Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that “Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person”.

In this context, we would like to recall paragraph 6b of the above-mentioned resolution, which urges States “To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;”.

With regard to reports of blocking of the Internet and transmission of media channels, we would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the 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.”

Moreover, we wish to reiterate the principle enunciated in the Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with paragraph 3, article 19 of the ICCPR, 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; and (iii) access to or use of information and communication technologies, including radio, television and the Internet.

In addition, the right to freedom of expression is closely linked to the right of all individuals to collectively express themselves in the form of peaceful assemblies, as guaranteed in article 21 of the ICCPR, which states that “the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others”.

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

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

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

In view of the urgency of the situation, we urge your Excellency's Government to discontinue the use of excessive force and firearms when policing the peaceful assemblies with immediate effect.

We further urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of its citizens are respected, to investigate the alleged causes of death, allegations of excessive use of force and ill-treatment and to bring perpetrators to justice. In this respect, we wish to refer to the statements made on 21 and 22 February 2011 by the Security Council (SC/10180 AFR/2120, available at: <http://www.un.org/News/Press/docs//2011/sc10180.doc.htm>), the Spokesperson of the Secretary-General (available at: <http://www.un.org/apps/sg/sgstats.asp?nid=5098>), the High Commissioner for Human Rights (available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10743&LangID=E>) and by our mandates (available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10747&LangID=E>). We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

We would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of its citizens in compliance with the above international instruments.

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

Are the facts alleged in the above summaries accurate? If yes, kindly indicate the fate and whereabouts as well as the legal basis for the arrests of Mr. Al Mahdi Saleh Hmeed; Mr. Sadek Saleh Hmeed; Mr. Ali Saleh Hmeed; Mr. Fredj Saleh Hmeed; and Mr. Abdelhafuz Ghogha.

Please provide detailed information on measures taken to respect the right to life of the peaceful demonstrators in accordance with article 6 of the ICCPR and please provide an explanation why excessive force and firearms are being used in the policing of peaceful assemblies. Please also provide detailed information on any foreign armed individuals who may have been involved in such policing.

Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators? In the case of foreign armed individuals, please provide detailed information on measures taken to ensure that they are held accountable for any possible human rights violations.

Please provide information on the measures taken to ensure the safety of Mr. Al Mahdi Saleh Hmeed; Mr. Sadek Saleh Hmeed; Mr. Ali Saleh Hmeed; Mr. Fredj Saleh Hmeed; and Mr. Abdelhafuz Ghogha.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

We would like to bring to the attention of your Excellency's Government that should the source submit the above mentioned allegations concerning Mr. Al Mahdi Saleh Hmeed; Mr. Sadek Saleh Hmeed; Mr. Ali Saleh Hmeed; and Mr. Fredj Saleh Hmeed as cases to the Working Group on Enforced or Involuntary Disappearances, they shall be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

Violation of due process safeguards in capital punishment cases

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: Group concern (2 identifiable individuals)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the comprehensive response received from the Government. He notes that the information submitted has clarified the concerns raised in the communication.

Allegation letter dated 2 September 2010, sent with the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning a large number of **foreign nationals on death row**, some of whom have reportedly suffered torture or other forms of ill-treatment, and the alleged failure to meet international standards for fair trial.

According to the information received

As of May 2009, there are over five hundred individuals on death row in Libya, and approximately fifty percent of them are foreign nationals. Many of them are reportedly from sub-Saharan countries such as Chad, Niger, Nigeria, Sudan and Somalia. It is alleged that Libyan courts impose death sentences in trials which do not meet the international standards and foreign nationals are particularly discriminated against in court proceedings. They are reportedly often not provided with interpretation or translation assistance during legal proceedings when they do not speak or understand Arabic. Further, they are allegedly not given access to representatives of their own consular or diplomatic authorities. In addition, it is reported that foreign nationals on death row are disadvantaged vis-à-vis Libyan nationals, as they generally have limited financial resources to seek pardon from the next-of-kin of alleged victims through qisas (financial compensation for the family of the murder victim) and diya (retribution for murder). They also do not have family members in Libya who can assist them to negotiate qisas and diya, and may be less familiar with the system.

To illustrate these allegations, we would like to bring to your attention the following cases of two foreign nationals currently in death row who have reportedly suffered torture and whose trials did not meet international standards:

Ms. Juliana Okoro, a Nigerian national, was arrested in 2000 on a murder charge. According to reports received, while she was held in the Bab Abu Gashir Police Station in

Tripoli, Ms. Okoro was regularly beaten with her hands tied behind her back during eighteen days. Allegedly, she did not have access to a lawyer until two or three years after the arrest and was not provided with an interpreter during any of the court hearings. She was sentenced to death and her sentence was confirmed on appeal by the High Court in 2008. As of May 2009, Ms. Okoro is on death row.

Mr. Haroun Mohamed Saleh Awwali, a national of Niger, was arrested on immigration charges in 2004 and transferred to Misratah Detention Center where a murder took place. After the incident, he was transferred to another detention centre where he was reportedly beaten with an electric cable to force him to “confess” the commission of the murder. He was also allegedly forced to thumb print a document that he was not able to read. According to the information received, Mr. Haroun Mohamed Saleh Awwali was not provided with a translator during his trial and did not understand the proceedings. He was subsequently found guilty of the murder at the Misratah Detention Centre and is on death row as of May 2009.

In this context, it is of particular concern that 18 individuals, including nationals of Chad, Egypt and Nigeria, were reportedly executed on 30 May 2010 after they were convicted of premeditated murder.

While we do not want to prejudge the accuracy of the allegations reported above, we would like to appeal to your Excellency’s Government to give due consideration to the inherent right to life as enshrined in article 6 of the International Covenant on Civil and Political Rights (ICCPR), acceded by your Excellency’s Government on 15 May 1970. Article 6, paragraph 2 provides that “sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide”. In this connection, we urge your Excellency’s Government to take all necessary measures to ensure that the minimum fair trial standards under article 14 of the ICCPR are respected for all individuals on death row, including foreign nationals. Article 14, paragraph 3 provides that in the determination of any criminal charge against them, everyone shall be entitled to minimum guarantees in full equality, including, inter alia: “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”, and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”. Further, considering the irremediable nature of capital punishment, we would also like to appeal to your Excellency’s Government the highest importance to the granting of amnesty. In this respect, article 6, paragraph 4 of the ICCPR expressly provides that “[a]mnesty, pardon or commutation of the sentence of death may be granted in all cases”. This provision is of particular importance in this communication, having regard to the allegations that foreign nationals are at disadvantage in seeking qisas and diya. In applying these provisions of the ICCPR, allow us to stress that all the rights enshrined in the ICCPR must be guaranteed to “all individuals within its territory and subject to its jurisdiction”, including non-nationals.

Furthermore, we would like to recall that under international law and human rights standards, foreign nationals are entitled to communicate with consular or diplomatic authorities of their states of origin, when they are arrested or committed to prison or custody pending trial or is detained in any other manner. In this regard, we would like to refer your Excellency’s Government to article 36 of the 1963 Vienna Convention on Consular Relations acceded by the Libyan Arab Jamahiriya on 7 June 1977, which states, inter alia, that “the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner”. The aforementioned provision also highlights that “consular officers shall have

the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment.” The United Nations General Assembly in resolutions 62/156, 63/184 and 64/166 as well as the Human Rights Council in resolution 9/5 have reaffirmed emphatically, inter alia, “the duty of States to ensure full respect and observance of the Vienna Convention on Consular Relations, particularly with regard to the right of foreign nationals, regardless of their immigration status, to communicate with a consular official of their own State in the case of detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention”.

Finally, we would like to draw your Excellency’s Government’s attention to paragraph 1 of Human Rights Council Resolution 8/8 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.” With regard to the case of Mr. Haroun Mohamed Saleh Awwali, we would like to draw your Excellency’s Government’s attention to article 15 of the Convention against Torture which provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

As it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide statistical information on foreign nationals who are currently on death row, including the number, nationalities, locations and crimes for which they have been sentenced to death row.
3. Please provide information on the current status of Ms. Juliana Okoro and Mr. Haroun Mohamed Saleh Awwali and the judicial proceedings which determined their sentences. Please indicate any measures taken to ensure that their fair trial guarantees were fully respected, as well as any measures to assist them in seeking amnesties from the families of the alleged victims or your Excellency’s Government. Please also clarify whether they have been allowed to contact their consular or diplomatic authorities of their states of origin.
4. Regarding the allegations of torture suffered by Ms. Juliana Okoro and Mr. Haroun Mohamed Saleh Awwali, please provide details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries that might have been carried out. If no inquiries have taken place, or if they have been inconclusive, please explain why. In this connection, please provide information about any prosecutions which might have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please provide details of the 18 foreign nationals who were executed on 30 May 2010, including their names, nationalities and crimes they were convicted of. Please also indicate any measures taken to ensure that their fair trial guarantees were fully respected, as well as any measures to assist them in seeking amnesties from families of the alleged victims or your Excellency's Government.

6. Please provide information on all measures undertaken to ensure consular protection in the case of the 18 foreign national who were executed on 30 May 2010.

Government reply dated 23 November 2010

The allegation contains six questions, to which we shall provide answers here below.

1. Claims that all those who receive death sentences are placed on death row have absolutely no basis in fact. The fact that an individual has been sentenced to death by a (criminal) court of first instance does not necessarily mean that he or she will be placed on death row, as death sentences must go through the following stages:

(a) Death sentences are handed down by the criminal courts. By law, they must be reviewed by the Supreme Court;

(b) The Supreme Court carries out a comprehensive review of a death sentence and either confirms the verdict of the court of first instance or annuls it and returns the case to the same court for a retrial before a new set of judges. The verdict is then reviewed by the Supreme Court another time;

(c) A death sentence confirmed by the Supreme Court must be endorsed by the High Judicial Council before it can be carried out.

A large number of death sentences that go through this process are quashed at appeal. Retrials are held and many convicted persons have their sentences commuted to prison terms, including life imprisonment; sometimes, they are even acquitted.

At all stages and levels of proceedings following the original trial, even when a final verdict has been pronounced or confirmed by the High Judicial Council, persons sentenced to death may still be reprieved and have their sentence commuted to life imprisonment, if the victim's next of kin relinquish their right to retribution, or if the High Judicial Council grants them a special pardon subject to a range of conditions. In other words, death sentences imposed by first instance courts are frequently annulled by the Supreme Court or lawfully commuted when the victim's next of kin relinquish their right to retribution.

2. Of the 34 persons whose sentences have been confirmed after going through all stages of proceedings and who now face execution, only 12 are foreign nationals. Two of those foreign nationals managed to escape from prison before their sentences were carried out and international warrants and red notices have been issued for their arrest. Furthermore, the death sentence imposed on an Iraqi national was suspended after he claimed that the next of kin had relinquished their right to retribution. Investigations are now underway to confirm the veracity of the claim. Attached is a list of persons who have been sentenced to death and whose cases have gone through all stages of proceedings.

3. Case of Ms. Juliana Okoro, a Nigerian national, and Mr. Haroun Mohamed Saleh Awwali, a national of the Niger, mentioned in the allegation letter:

(a) Ms. Juliana Okoro, born 1980, a Nigerian national:

(i) Together with six other Nigerians, Ms. Okoro was accused of stabbing to death Mr. Musa Tubel, a Nigerian national, and of kidnapping Mr. Patrick Uzu, also a Nigerian national;

- (ii) With the assistance of an interpreter, Ms. Okoro was interviewed on 5 September 2000;
- (iii) She was questioned by the Office of the Public Prosecutor in the presence of an interpreter;
- (iv) Ms. Okoro was then tried in a criminal court, which appointed a lawyer from the People's Advocacy Department, who defended her free of charge. The court held over 30 sittings, in response to various petitions from the defence;
- (v) Ms. Okoro's defence lawyer attended court with her until she was sentenced to death on 15 April 2008;
- (vi) At most court sessions, including the most important hearing on 18 March 2008, Ms. Okoro was assisted by an interpreter approved by an expert body;
- (vii) Her lawyer lodged an appeal against the death sentence before the Supreme Court, where the case is still being considered;
- (viii) Contrary to the information in the allegation letter, this case is filed as Souq Al-Juma police station, not Bab bin Gashir police station, case No. 646/2000;
- (ix) The case file does not contain any allegations by the accused or her defence counsel about beatings or torture;
- (b) Mr. Haroun Mohamed Saleh Awwali, who goes by the name Ama, a national of the Niger, born 1977:
- (i) Together with six co-nationals, Mr. Haroun Mohamed Saleh Awwali was charged in Misurata case No. 657/2005 with premeditated murder, robbery and forming a criminal gang in order to commit robbery;
- (ii) On the date of the incident in question, the gang attacked a shop and tied up and smothered the shop security guard before stabbing him to death. The guard was held down until he died;
- (iii) Once the investigation had been completed, Mr. Awwali was brought before a criminal court, which assigned a lawyer to defend him. Following a public trial, the court sentenced Mr. Awwali and other defendants to death;
- (iv) Mr. Awwali speaks Arabic fluently and did not request the assistance of an interpreter. Moreover, the court did not consider that such assistance was required, although it has called upon interpreters to assist defendants who speak Hausa;
- (v) In court, Mr. Awwali did not claim that he had been beaten or tortured, although three other defendants in the case did file petitions with the court on this ground. Having considered the petitions, the court ordered those persons to be examined by a forensic medical examiner;
- (vi) Throughout the proceedings, Mr. Awwali admitted the charges against him;
- (vii) Counsel for Mr. Awwali filed an appeal for cassation with the Supreme Court;
- (viii) Mr. Awwali did not submit any proof of having reached a settlement with the victim's next of kin to allow for his sentence to be commuted, even though the victim was a foreign national and not a Libyan citizen.
4. The allegation letter provides no details with regard to the claims that the two persons were tortured. It does not specify where the torture occurred, who filed the complaint, who is alleged to have committed the torture and under whose auspices (the security or prison services) the torture allegedly occurred. The allegations made in the letter are therefore nothing more than hearsay. There is no evidence to show that a complaint of

this kind was actually made and therefore it is impossible to follow up on this communication or to provide information on the results of investigations carried out in connection with this matter. In this regard, it should be noted that the investigating authority, namely, the Office of the Public Prosecutor, receives, addresses and investigates communications or complaints about torture and deprivation of liberty. It prosecutes individuals when there is sufficient evidence against them and files all cases in which an offender cannot be prosecuted for lack of evidence. In accordance with the procedures described above, the Office of the Public Prosecutor resolved seven cases of torture in the period spanning 2009 and the first six months of 2010. Moreover, it resolved 63 out of 66 cases of deprivation of liberty that were brought to its attention. These statistics are testimony to the seriousness with which the Office of the Public Prosecutor deals with cases of torture and deprivation of liberty and ensures that the perpetrators of such offences are duly punished. (Attached is a copy of the official statistics.)

5. (i) Death sentences imposed on 9 foreign nationals, rather than 18, as was stated in the allegation letter, were carried out on 31 May 2010. (Attached is documentation detailing the number, names and nationalities of those executed.)

(ii) On the date of the executions, the death sentence imposed on Mr. Mustafa Ismail Mohamed Mulaa, a Ghanaian national, was suspended following a request, transmitted via the Ghanaian consulate, for a one month stay of execution while attempts were made to obtain the consent of the victim's next of kin to relinquish their right to retribution. The consent was only given after the time limit had expired.

6. In communiqué No. 9.76.95, dated 20 January 2010, issued by the Director of the General Administration for Relations and Cooperation of the General People's Committee for Justice, on informing States' consulates and diplomatic missions of the execution of their nationals, the consular affairs section of the General People's Committee for External Liaison and International Cooperation was informed of all executions of foreign nationals that were carried out on 30 and 31 May 2010.

México

asesinato de la Sra. Marisela Escobedo Ortiz, defensora de los derechos humanos.

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 1 mujer

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de México con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Llamamiento urgente con fecha 28 de diciembre de 2011, enviado junto con el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión; la Relator Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias; y la Relator Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido 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.

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.

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.

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.

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.

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.

Se expresa 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 expresa 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.

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

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

Además, nos permitimos hacer un llamamiento urgente al Gobierno de su Excelencia para que adopte las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

Nos gustaría referirnos también a la Resolución 8/3 del Consejo de Derechos Humanos sobre las ejecuciones extrajudiciales, sumarias o arbitrarias que "[r]eitera la obligación que incumbe a todos los Estados de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables, velando al mismo tiempo por el derecho de toda persona a un juicio imparcial y público ante un tribunal competente, independiente e imparcial establecido por la ley, de dar una indemnización adecuada, dentro de un plazo razonable, a las víctimas o a sus familiares y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias" (A/HRC/RES/8/3, párrafo 4, reiterando la resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, quisiéramos recordar el principio 4 que obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 que prevé que los gobiernos conduzcan "una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias."

Asimismo, quisiéramos llevar a la atención del Gobierno de su Excelencia el Artículo 7 (c) de la Convención sobre la Eliminación de Todas las Formas de Discriminación Contra la Mujer, el cual establece que Los Estados Partes tomarán todas las medidas apropiadas para eliminar la discriminación contra la mujer en la vida política y pública del país y, en particular, garantizarán a las mujeres, en igualdad de condiciones con los hombres, el derecho a participar en organizaciones y en asociaciones no gubernamentales que se ocupen de la vida pública y política del país. En ese sentido, hacemos referencia al Artículo 4 (o & p) de la Declaración de las Naciones Unidas sobre la Eliminación de la Violencia Contra la Mujer, el cual afirma que los Estados deben reconocer el importante papel que desempeñan en todo el mundo el movimiento en pro de la mujer y las organizaciones no gubernamentales en la tarea de despertar la conciencia acerca del problema de la violencia contra la mujer y aliviar dicho problema; y deben además promover la labor del movimiento en pro de la mujer y las organizaciones no gubernamentales, y cooperar con ellos en los planos local, nacional y regional.

Quisiéramos llevar a la atención del Gobierno de su Excelencia el Artículo 4 (c & d) de la Declaración de las Naciones Unidas sobre la Eliminación de la Violencia contra la Mujer, el cual afirma la responsabilidad de los Estados de proceder con la debida diligencia a fin de prevenir, investigar y, conforme a la legislación nacional, castigar todo acto de violencia contra la mujer, ya se trate de actos perpetrados por el Estado o por particulares. Con este fin, los estados deben establecer, en la legislación nacional, sanciones penales, civiles, laborales y administrativas, para castigar y reparar los agravios infligidos a las mujeres que sean objeto de violencia; debe darse a éstas acceso a los mecanismos de la justicia y, con arreglo a lo dispuesto en la legislación nacional, a un resarcimiento justo y eficaz por el daño que hayan padecido; los Estados deben además informar a las mujeres de sus derechos a pedir reparación por medio de esos mecanismos.

Finalmente, consideramos relevante hacer referencia a las recomendaciones emitidas por la Relatora Especial sobre violencia contra las mujeres tras su visita a México en febrero de 2005, las cuales instan al Estado mexicano a poner fin a la impunidad respecto de la violencia contra la mujer llevando a cabo reformas de la legislación, los procedimientos de investigación y el sector judicial; a identificar y encauzar de manera transparente a todos los autores de asesinatos de mujeres o actos de violencia contra la mujer en el estado de Chihuahua; a prestar servicios de protección y apoyo a las víctimas de la violencia o a sus familias, así como a las mujeres que corren el riesgo de sufrir actos de violencia; a crear una base de información y conocimientos que tenga en cuenta las cuestiones de género; a fortalecer las infraestructuras institucionales y a promover programas operacionales, de capacitación y de sensibilización.

Quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y las libertades de la persona mencionada e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

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

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.
3. Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/ perpetradores?
4. Tras los hechos ocurridos, por favor, sírvanse indicar qué medidas se van a adoptar para garantizar la protección de los miembros de la familia de la Sra. Marisela Escobedo Ortiz.
5. Por favor, indiquen si se ha proporcionado o se va a proporcionar compensación a la familia de la víctima.
6. Por favor, sírvase proporcionar información detallada sobre las acciones realizadas para erradicar el problema de violencia contra las mujeres en el Estado de Chihuahua, en

particular aquellas encaminadas a dar cumplimiento a la sentencia de la Corte Interamericana de Derechos Humanos en el caso de femicidio conocido como “Campo Algodonero”, dictada el 10 de diciembre de 2009.

México: 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.

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 2 hombres

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de México con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Carta de alegaciones con fecha 1 de octubre de 2011, enviada junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia información que hemos recibido 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.

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.

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.

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”.

Se teme 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 expresa 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.

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.

Asimismo, deseamos reiterar las recomendaciones del Relator Especial sobre el Derecho a la Libertad de Opinión y Expresión efectuadas en su informe preliminar al Gobierno de Su Excelencia, en el marco de la reciente visita oficial, que realizara conjuntamente con la Relatora sobre la Libertad de Expresión de la Organización de Estados Americanos, en cuanto a que: “Se debe fortalecer la Fiscalía Especial para la Atención a Delitos cometidos contra la Libertad de Expresión de la Procuraduría General de la República y a los órganos locales de procuración y administración de justicia, especialmente adoptar las reformas necesarias para permitir el ejercicio de la jurisdicción federal sobre los delitos contra la libertad de expresión” De igual manera, reitera la urgente necesidad de “establecer un mecanismo nacional de protección a periodistas...” con el propósito de que los mismos ejerzan libremente su profesión.

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

Además, quisiéramos referirnos a los artículos siguientes:

- El artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados.

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

fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

Además, nos permitimos hacer un llamamiento urgente al Gobierno de Su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

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

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen "la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias." (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar al Gobierno de Su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y libertades de la persona mencionada e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

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

5. Por favor, indique si la víctima o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

La matanza de 72 migrantes indocumentados

Violación alegada: Ataques o asesinatos/Impunidad

Persona objeto del llamamiento: 58 hombres, 14 mujeres

Carácter de la respuesta: satisfactoria en termino generales

Observaciones del Relator Especial

El Relator Especial agradece la respuesta proporcionada por parte del Gobierno, sin embargo, muestra su grave procuración sobre la matanza de 72 migrantes. El Relator Especial insta al Gobierno actuar para promover la seguridad de todas las personas que se encuentren en el territorio mexicano, tanto sus nacionales como a los migrantes. El Relator Especial se permite recordar al Gobierno mexicano sus obligaciones internacionales en cuanto al respetar y garantizar a la vida de cualquier persona que se encuentre en su territorio, nacional o no nacional.

El Relator Especial toma nota de las investigaciones llevadas a cabo por parte de las autoridades mexicanas, sin embargo, urge al Gobierno a garantizar que un crimen de esta magnitud y gravedad no permanezca en la impunidad. Además, desea manifestar su preocupación en virtud de que este caso no es un hecho aislado y exhorta al Gobierno mexicano tomar las medidas adecuadas y necesarias para asegurarse que este tipo de situaciones no vuelvan a tener lugar.

Carta de alegaciones con fecha 15 de septiembre de 2010, enviada junto con el Relator Especial sobre los derechos humanos de los migrantes

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia la información que hemos recibido con respecto a la matanza de 72 migrantes indocumentados -58 hombres y 14 mujeres- cuyos cuerpos fueron descubiertos el día 24 de agosto en un rancho ubicado a las afueras del municipio de San Fernando, en el Estado de Tamaulipas, cerca de la frontera norte de México.

Según la información recibida

A partir del testimonio brindado por uno de los sobrevivientes de origen ecuatoriano, se habría corroborado que 75 personas migrantes indocumentados de diversos países de Centro y Sudamérica, quienes se habrían dirigido hacia la frontera norte del país, habrían sido plagiadas por una célula de la delincuencia organizada, trasladadas a una finca y acibilladas por negarse a ser extorsionadas y reclutadas por parte de los criminales. Los delincuentes se habrían identificado como miembros de la organización criminal de Los Zetas. Según la información recibida, las víctimas quienes habían sido secuestradas por el grupo criminal eran de El Salvador, Guatemala, Honduras, Ecuador y Brasil.

Este no sería un caso aislado, en mayo de 2010, 55 cadáveres de migrantes hubieron sido hallados en una mina abandonada al sur de la Ciudad de México, y en julio de 2010, 51 cadáveres de migrantes hubieron sido encontrados en un campo cerca de la ciudad de Monterrey. Además, según la Comisión Nacional de Derechos Humanos, los grupos criminales habrían secuestrado a 9.758 migrantes tan solo de septiembre de 2008 a febrero de 2009, un número que solo incluye los casos detectados. Las acciones de secuestro a personas migrantes se dirigirían no sólo a solicitar rescate sino a someterlos a condiciones de explotación laboral y sexual, y para fines ilícitos.

Sin que de alguna manera constituya prejuzgamiento sobre los hechos o el fondo del asunto, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos (PIDCP). Los artículos 3 y 6 de estos instrumentos respectivamente garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que estos derechos sean protegidos por la ley y que nadie sea arbitrariamente privado de su vida. Además, la Convención internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares, que México ha ratificado en 1999, establece en su artículo 9 que el derecho a la vida de los trabajadores migratorios y sus familiares estará protegido por ley.

Es importante subrayar que el PIDCP reconoce entre otros los derechos a la vida y la seguridad personales de todos los que se hallan bajo la jurisdicción de los Estados, tal como lo señala el Comité de Derechos Humanos, en el párrafo tercero de su observación general No.31 sobre "La índole de la obligación jurídica general impuesta a los Estados Partes en el Pacto", en el que recuerda, entre otros, que "[a] los Estados Partes se les impone una obligación general de respetar los derechos del Pacto y de asegurar su aplicación a todos los individuos en su territorio y sometidos a su jurisdicción". Además, el artículo 7 de la Convención internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares prevé que los Estados Partes se comprometerán, de conformidad con los instrumentos internacionales sobre derechos humanos, a respetar y asegurar a todos los trabajadores migratorios y sus familiares que se hallen dentro de su territorio o sometidos a su jurisdicción los derechos previstos en la presente Convención.

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen "la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias." En particular, el principio 9 prevé que los gobiernos conduzcan "una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias".

En este contexto, también quisiéramos recordar la Observación General 31 al PIDCP del Comité de Derechos Humanos que establece, en el párrafo 8, que "sólo se podrán cumplir plenamente las obligaciones positivas de los Estados Parte de garantizar los derechos reconocidos en el Pacto si el Estado protege a las personas, no sólo contra las violaciones de los derechos reconocidos en el Pacto que cometan sus agentes, sino también contra los actos que cometan particulares o entidades", y que "puede haber circunstancias en las que, por no haberse garantizado los derechos reconocidos en el Pacto como se dispone en el artículo 2, los Estados Parte infrinjan estos derechos permitiendo que particulares o entidades cometan tales actos o no adoptando las medidas apropiadas o no ejerciendo el cuidado debido para prevenir, castigar, investigar o reparar el daño así causado".

En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar al Gobierno de Su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y libertades de la persona mencionada e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos. En este sentido, valoramos la declaración del representante de México durante el debate general con la Alta Comisionada, durante el 15°

período de sesión del Consejo de Derechos Humanos, en la que se afirma el compromiso del Gobierno de México a no permitir que estos hechos permanezcan impunes.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.
3. Por favor, sírvanse proporcionar información detallada sobre los desarrollos de las diligencias judiciales que se hayan iniciado con relación a estos casos. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/perpetradores?
4. ¿Que medidas se han tomado para garantizar la seguridad de los que han sobrevivido a esta matanza?
5. Por favor, indique cualquier compensación que haya sido atribuida a la familia de las víctimas.
6. ¿Cuales son las acciones tomadas o planeadas para prevenir la repetición de tales incidentes en el futuro?

Respuesta del Gobierno

Mediante carta fechada el 28 de septiembre de 2010, el Gobierno transmitió una respuesta a la comunicación con fecha 15 de septiembre de 2010.

Frente al asesinato de 72 migrantes centro y sudamericanos en el Municipio de San Fernando, Tamaulipas, el 22 de agosto de 2010, el Estado mexicano ha dispuesto de todos los recursos materiales y humanos para atender, a través de distintas dependencias federales y del estado de Tamaulipas, los trabajos para la identificación de los cuerpos de las víctimas y la integración de la averiguación para el castigo de los responsables.

Con motivo del hallazgo de los cuerpos el 24 de agosto pasado se inició la averiguación previa 354/2010, por parte de la Agencia del Ministerio Público Investigador de San Fernando, dependiente de la Procuraduría General de Justicia del estado de Tamaulipas (PGJ Tamaulipas). En primera instancia se practicaron las diligencias correspondientes: fe cadavérica, autopsia, recolección de evidencias para prácticas de pruebas de ADN, prueba de balística, fotografía, certificados de defunción expedidos por los médicos legistas, inscripción de las actas de defunción de las personas que lograron ser identificadas ante la oficialía del Registro Civil de Reynosa, Tamaulipas.

Con base en informes rendidos por peritos de la materia, no se pudieron practicar los exámenes de alcoholemia, rodizonato de sodio y dactiloscopia debido al avanzado estado de descomposición en que fueron encontrados los cuerpos. El procedimiento que se siguió para lograr identificar a algunos de los cadáveres fue revisar entre sus pertenencias para verificar si portaban algún documento con el cual se pudieran identificar a las víctimas, lográndose la identificación de varios de ellos y una vez hecho la anterior, con las limitaciones que se tenía en ese momento, se comunicó a la Secretaría de Relaciones Exteriores para que por los conductos diplomáticos procediera a comunicarlos a los países de origen de las víctimas. Asimismo, por considerar el asunto de la competencia de la Procuraduría General de la República (Crimen organizado), la Procuraduría local solicitó la atracción del caso a esa institución federal.

Una vez que atrajo el asunto, y al momento de recibir los cuerpos y los expedientes elaborados por la Procuraduría General de Justicia del Estado de Tamaulipas, la PGR instrumentó una serie de acciones para avanzar en la identificación de las víctimas. En ese sentido, peritos de la Dirección General de Coordinación de Servicios Periciales de la PGR practicaron diferentes estudios a los cadáveres (entre las que se incluyeron la necropsia, dactiloscopia, fotografía, antropología forense, odontología forense, genética). También tomaron muestras de ADN de los cuerpos.

Cabe resaltar que personal de la Comisión Nacional de los Derechos Humanos (CNDH) participó como observador en la práctica de las necropsias.

En relación con la identificación de personas post mortem, la PGR utiliza el “Protocolo Modelo para la investigación Forense de Muertes sospechosas de haberse producido por Violación de los Derechos Humanos”.

Dicho protocolo fue elaborado por expertos en materia de antropología forense y medicina legal y tiene como objetivo brindar al profesional de las ciencias forenses y criminalística, lineamientos prácticos para documentar y analizar cadáveres frescos, en descomposición o esqueletizados, para determinar signos de tortura o abuso físico.

Este modelo de protocolo cuenta con un apartado denominado “investigación forense sobre cadáveres frescos”, en el que se establecen diversas técnicas a saber: exámenes generales; examen buco-dentario; dactiloscopia; exámenes radiológicos; exámenes de genética forense.

Las autoridades mexicanas han facilitado todo lo necesario para la identificación de los cuerpos y, de acuerdo con la práctica internacional, ha sido responsabilidad exclusiva de las autoridades de los países involucrados (Brasil, Ecuador, El Salvador, Guatemala, Honduras y la India), corroborar la identificación de los mismos. Con ese propósito, sus respectivos gobiernos han realizado las pruebas de ADN a posibles familiares de las víctimas, a fin de coordinar con la PGR el cruce de información genética que puede ser de utilidad para identificar a las víctimas.

Por su parte, desde que la Secretaría de Relaciones Exteriores (SER) fue notificada del caso (24 de agosto) y con base en los primeros testimonios de un joven que sobrevivió a los hechos a pesar de tener una herida de bala, señaló que entre las víctimas se encontraban nacionales de Brasil, Ecuador, El Salvador, Guatemala, Honduras y la India, la Cancillería se dio a la tarea de notificar de esta situación a las Embajadas de los citados países para coordinar acciones relativas a la plena identificación de cadáveres y posterior repatriación de los mismos. Este proceso sigue en marcha.

Dichas representaciones diplomáticas transmitieron la notificación a los posibles familiares de las víctimas desde sus respectivas Cancillerías. Con el apoyo de la PGR, la SER coordinó dos visitas a Reynosa, Tamaulipas para que diplomáticos de Brasil, Ecuador, El Salvador, Guatemala y Honduras, pudieran iniciar las acciones para confirmar la nacionalidad de los migrantes fallecidos. Los diplomáticos identificaron a la mayoría de sus connacionales. Asimismo, se celebraron en la SER tres reuniones entre autoridades federales, del estado de Tamaulipas y representantes diplomáticos de los países cuyos nacionales pudieran estar entre las víctimas, con el propósito de aclarar dudas y proporcionar mayor información sobre las investigaciones en torno a los hechos y respecto a los trabajos para identificación de los cadáveres. En dichas reuniones han participado, por parte de México, funcionarios de la Presidencia de la República; del Instituto Nacional de Migración; de las Secretarías de Gobernación, de Marina, de Seguridad Pública y de Relaciones Exteriores; de la Procuraduría General de la República y del Gobierno del estado de Tamaulipas.

Al 8 de septiembre del año en curso, de los 72 cuerpos hallados, 27 han sido identificados por las autoridades de Honduras y El Salvador, mientras que por los 45 cuerpos restantes aún prosiguen los trámites de identificación en coordinación entre la PGR y autoridades de los países involucrados.

La institución encargada de la investigación de los hechos es la PGR una vez que atrajo el caso a solicitud de la PGJ-Tamaulipas.

Personal de la CNDH acudió a San Fernando para constatar parte de las diligencias ministeriales relacionadas con la integración de la averiguación previa.

Cabe señalar que el 23 de agosto de 2010, después de un enfrentamiento entre gente armada y elementos de la Marina-Armada de México, se detuvo a una persona de origen mexicano, plenamente identificado como participante de los hechos. Asimismo, en el enfrentamiento en que se detuvo a esta persona, fueron abatidos otros tres presuntos delincuentes.

Por otro lado, el 30 de agosto de 2010, la Marina localizó los cuerpos sin vida de tres hombres y dos mujeres, de los cuales los tres hombres fueron también identificados como coparticipes de los hechos delictivos.

Es decir, se contaba con siete presuntos responsables vinculados al homicidio de los 72 migrantes. Uno asegurado pajo custodia de la Procuraduría y seis más fallecidos.

El pasado 3 de septiembre, personal de Marina, durante un recorrido al Suroeste de San Fernando, Tamaulipas, aseguró a cuatro presuntos delincuentes, así como armamento de alto calibre y tres vehículos, entre otras cosas. Asimismo, encontró una fosa con dos cadáveres y liberó a tres personas que se encontraban en poder de los delincuentes. En días posteriores, en recorridos de la Marina por la zona, fueron asegurados otros tres presuntos integrantes del crimen organizado.

Estas personas aseguradas en días recientes, al parecer forman parte de la estructura operativa autodenominada "Los Zetas", la que hasta ahora, se presume, llevó a cabo el homicidio de los 72 migrantes en San Fernando, Tamaulipas. Lo que se desprende, entre otras cosas, de sus primeras declaraciones.

Estos presuntos delincuentes fueron puestos a disposición de la Procuraduría General de la República por su probable participación en los hechos referidos.

La PGR continúa con las investigaciones y la debida integración de los expedientes respectivos, a fin de poner a todos los responsables a disposición de la justicia. Asimismo, la Secretaría de Gobernación (SEGOB) seguirá impulsando las acciones de coordinación necesarias con los gobiernos de los estados, a fin de enfrentar de manera integral los abusos cometidos contra los migrantes.

Protección y garantías para la integridad personal y la vida de los testigos de estos hechos y otros similares.

La Agencia de Ministerio Público encargado de la investigación, integrará un estudio de riesgo sobre los testigos de los hechos ocurridos. Una vez analizado el riesgo se determinará el mecanismo de protección de los testigos que deba implementarse.

Con fecha 26 de agosto de 2010 la CNDH emitió dos oficios solicitando medidas cautelares. El primero, dirigido a la Secretaría de Seguridad Pública Federal, con la finalidad de garantizar la integridad del migrante sobreviviente, así como para que se tomen las medidas necesarias a fin de evitar la consumación de hechos violentos de difícil o imposible reparación, que pueden afectar sus derechos humanos. Dicha petición fue debidamente atendida, lo que conllevó a que la División de Seguridad Regional de la

Policía Federal implementara rondines en el nosocomio en el que se encontraba recibiendo atención médica el migrante sobreviviente.

El segundo, dirigido a la Procuraduría General de Justicia del estado de Tamaulipas, en el cual se solicita preservar todo tipo de indicios que se obtengan en el lugar de los hechos, así como aquellos datos que permitan la identificación de los cadáveres.

Para la debida atención médica y recuperación del sobreviviente, fue trasladado al Hospital de la Marina en Matamoros, Tamaulipas, lugar en el que se resguardó su seguridad por elementos de la Marina Armada de México. Posteriormente fue trasladado a su país de origen.

Por lo que hace al sobreviviente de nacionalidad hondureña, se encuentran bajo resguardo del Ministerio Público de la Federación en calidad de testigo, del cual para preservar su seguridad e integridad no se aportan mayores datos.

Por lo que respecta a la protección de testigos de hechos similares, se destaca que México llevó a cabo modificaciones legislativas a nivel constitucional y ha trabajado en diversos proyectos de legislación sobre protección a testigos.

De esta manera, el 18 de junio de 2008 fue publicado en el Diario Oficial de la Federación el decreto que reforma, adiciona y deroga diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos. (En su respuesta, el Gobierno hizo referencia al artículo 20).

El Gobierno de México ha trabajado en diversos proyectos de legislación sobre protección a testigos. Se esa manera, participó en los trabajo para la creación de una Ley Modelo sobre Protección a Testigos, promovida por la Oficina contra la Droga y el Delito de Naciones Unidas (ONUDD) y la Organización de Estados Americanos.

A partir de dichos esfuerzos se han elaborado otros proyectos de legislación como por ejemplo un proyecto de ley sobre la materia elaborado por el estado de Chihuahua. Asimismo, actualmente se encuentra en estudio para su eventual aprobación en la Cámara de Diputados, una iniciativa de reforma sobre el tema que nos ocupa, la cual es compatible con las reformas del artículo 20 constitucional y las disposiciones de la Ley Federal Contra la Delincuencia Organizada, así como con los estándares internacionales existentes sobre la materia.

Con la finalidad de promover las modificaciones de disposiciones normativas y prácticas administrativas que constituyen o propician violaciones a los derechos humanos, el 21 de mayo de 2009, la CNDH emitió la recomendación general 16 sobre el plazo para resolver una averiguación previa, la cual fue dirigida al Procurador General de la República, el Procurador de Justicia Militar y los Procuradores Generales de Justicia de los estados.

En sus observaciones, la CNDH inició que los agentes del Ministerio Público, a fin de garantizar una adecuada procuración de justicia, deben cumplir en el desarrollo de su labor con diligencias mínimas, entre las que destaca dictar las medidas de auxilio y protección a las víctimas del delito y los testigos.

Acciones para garantizar la seguridad y protección de los derechos humanos de las personas migrantes que transitan por el territorio Mexicano:

El 22 de marzo de 2010, en el marco de una audiencia pública celebrada en la Comisión Interamericana de Derechos Humanos “Situación de los derechos humanos de los migrantes en tránsito por México”, el Estado mexicano se comprometió a presentar un informe sobre las acciones que ha emprendido para atender el fenómeno del secuestro de personas migrantes y la protección de sus derechos humanos.

El Gobierno de México ha estrenado un plan de acción integral que orientará la labor del Estado Mexicano para tal propósito. El plan incluye el fortalecimiento de las acciones ya instrumentadas en el último año por las autoridades federales y locales competentes, entre las que destaca la actuación inmediata y articulada de las autoridades de seguridad pública y de procuración de justicia, en estrecha coordinación con la Secretaría de Gobernación y con información de la Secretaría de Comunicaciones y Transportes.

Estrategia Integral para la Prevención y Combate al Secuestro de Migrantes

El Gobierno de México, comprometido con la elaboración e instrumentación de una política pública específica, ordenada y consiste, que aborde la problemática del secuestro de personas migrantes en territorio nacional de manera integrada, está trabajando en la instrumentación de acciones que permitan garantizar la seguridad de los migrantes y combatir el secuestro y otros delitos relacionados, tales como la extorsión y otras violaciones a sus derechos fundamentales.

Líneas de acción: Firma de convenios, implementación de un plan operativo, con un importante componente de inteligencia, Plan de comunicación para prevenir, informar y concientizar, Actualización del procedimiento para la detención de secuestradores e integración de averiguaciones previas, establecimiento de mecanismos de atención especial a víctimas extranjeras. El Gobierno proporcionó información sobre los convenios relevantes al tema, así como información sobre el mecanismo interinstitucional para prevenir agresiones en contra de las personas migrantes.

En conclusión, a raíz de los hechos perpetrados el 22 de agosto en San Fernando, Tamulipas, el Gobierno mexicano reitera su compromiso para garantizar el pleno respeto de los derechos humanos de los migrantes y sus familias. De manera inmediata a los hechos, el Gobierno ha brindado todo el apoyo a los Estados concernidos a efecto de facilitar la plena identificación de las víctimas, ha fortalecido los operativos de vigilancia en la zona y ha dado inicio a las averiguaciones correspondientes. En este sentido, las distintas autoridades del gobierno federal han actuado, conforme a sus competencias, a fin de esclarecer el delito y castigar a los responsables de este lamentable suceso que por su magnitud, plantea nuevos retos a la región en su conjunto. Destaca la elaboración de una estrategia integral para atender la problemática de los fenómenos delictivos que afectan a los migrantes. Cabe destacar que el secuestro, la trata, los homicidios y otros fenómenos delictivos en contra de personas migrantes son parte de una problemática regional y deben ser atendidos también desde un enfoque de cooperación internacional.

Asesinato de dos niños

Violación alegada: Ataques o asesinatos

Persona objeto del llamamiento: 2 niños

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de México con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Llamamiento urgente con fecha 11 de mayo de 2010, enviado por el Relator Especial

En este contexto, quisiera señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con el asesinato de dos niños en Tamaulipas el sábado 3 de abril de 2010.

De acuerdo con las informaciones recibidas

El sábado 3 de abril, las familias Almanza Salazar y Rangel Velázquez se dirigían a Matamoros, Estado de Tamaulipas, para tratar de pasar un domingo de pascua en la playa en compañía de sus hijos pequeños. En varios lugares de Tamaulipas este día se conmemora como el “Día de la Coneja”, una celebración de origen estadounidense, que genera un importante movimiento de familias que buscan lugares fuera de las ciudades para celebrarlo.

Poco antes de llegar a Ciudad Mier, las familias se habrían encontrado con un retén militar y habrían bajado sus ventanillas para identificarse. Sin embargo, los militares no les habrían indicado nada, por lo cual reiniciaron su camino. Según la información recibida, no habrían avanzado más de 50 metros cuando de pronto los soldados habrían comenzado a disparar contra la camioneta Tahoe sin detenerse, a pesar de que los padres de familia habrían tratado de identificarse.

Según el testimonio de Carlos Alfredo Rangel, tío de las víctimas: “de repente nos empezaron a disparar y yo me quedé en la camioneta debido a que recibí disparos en las piernas y no me pude bajar. Cuando terminaron los disparos dos militares se acercaron a la camioneta diciendo uno a otro que me mataran. Al final me sacaron de la camioneta y me llevaron a un centro médico”.

Según medios locales, el Gobierno del Estado habría emitido un comunicado en el que informaba de un “enfrentamiento” entre civiles y militares en el cual habían resultado muertas 4 personas, incluyendo dos menores inocentes.

Según la información recibida, Martín Almanza Rodríguez, padre de los menores asesinados, y quien conducía el vehículo, habría afirmado que “cuando pasamos el retén y nos empezaron a disparar, incluso sacamos una toalla y les gritamos que habían niños, que no dispararan; pero no nos hicieron caso”. Por su parte Cintia Salazar Castillo, madre de los pequeños habría dicho: “nosotros íbamos de viaje como casi todos los años, me quitaron a dos de mis niños, ¿quien me los va a regresar?, pues nadie, yo les decía que no nos tiraran porque había niños, no me dieron una respuesta y en ese rato me dijeron los militares que me daban una disculpa, pero con disculpas nadie me los va regresar, ellos iban a la escuela como cualquier niño de esa edad”.

Según la información recibida, habrían sido usadas también granadas de fragmentación contra las familias. Como resultado del ataque, de los 13 ocupantes del vehículo, habrían perdido la vida Brian y Martín Almanza Salazar, de 9 y 5 años respectivamente. Así mismo 10 personas, entre ellos 7 menores de edad, habrían sido heridas con impactos de bala y granada de fragmentación. Los padres de las víctimas habrían presentado una queja ante el Comité de Derechos Humanos de Nuevo Laredo.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos (PIDCP). Los artículos 3 y 6 de estos instrumentos respectivamente garantizan a todo individuo los derechos a la vida y a la seguridad de su persona y disponen que estos derechos sean protegidos por la ley y que nadie sea arbitrariamente privado de su vida. Además, el artículo 6 de la Convención sobre los Derechos del Niño reconoce que todo niño tiene el derecho intrínseco a la vida y obliga a los Estados partes a garantizar la supervivencia de los niños.

En su Observación General sobre el artículo 6, el Comité de Derechos Humanos ha observado que: “los Estados Partes no sólo deben tomar medidas para evitar y castigar los actos criminales que entrañen la privación de la vida, sino también evitar que sus propias fuerzas de seguridad maten de forma arbitraria. La privación de la vida por las autoridades

del Estado es una cuestión de suma gravedad. Por consiguiente, la ley debe controlar y limitar estrictamente las circunstancias en que dichas autoridades pueden privar de la vida a una persona”. El artículo 6 del PIDCP exige que el uso de la fuerza por la fuerzas de seguridad sea hecho en la medida de lo estrictamente necesario, y que la fuerza sea usada de manera proporcional al objetivo perseguido. Asimismo, el Principio 9 de los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley establece que: “no emplearán armas de fuego contra las personas salvo en defensa propia o de otras personas, en caso de peligro inminente de muerte o lesiones graves... y sólo en caso de que resulten insuficientes medidas menos extremas para lograr dichos objetivos. En cualquier caso, sólo se podrá hacer uso intencional de armas letales cuando sea estrictamente inevitable para proteger una vida”.

Asimismo, el Principio 1 de los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias establece que “No podrán invocarse para justificar esas ejecuciones circunstancias excepcionales, como por ejemplo, el estado de guerra o de riesgo de guerra, la inestabilidad política interna ni ninguna otra emergencia pública” [y que] “Esas ejecuciones no se llevarán a cabo en ninguna circunstancia...”

En este contexto, también quisiera recordar el artículo 2 del PIDCP que prevé que “Toda persona cuyos derechos o libertades reconocidos en el presente Pacto hayan sido violados” dispondrá de “un recurso efectivo” y que “La autoridad competente, judicial, administrativa o legislativa, o cualquiera otra autoridad competente prevista por el sistema legal del Estado, decidirá sobre los derechos de toda persona que interponga tal recurso, y desarrollará las posibilidades de recurso judicial”. Asimismo, la Observación General 31 al PIDCP del Comité de Derechos Humanos prevé que “los Estados Parte infringen estos derechos permitiendo que particulares o entidades cometan tales actos o no adoptando las medidas apropiadas o no ejerciendo el cuidado debido para prevenir, castigar, investigar o reparar el daño así causado”.

Como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” En particular, el principio 9 prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias”.

Es mi responsabilidad, de acuerdo con el mandato que me ha sido otorgado por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a mi atención. En este sentido, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

¿Son exactos los hechos a los que se refieren las alegaciones presentadas?

Por favor, sírvase proporcionar los detalles y, cuando estuvieren disponibles, los resultados de cualquier investigación policial, judicial u otras que se hubieran llevado a cabo en relación con la muerte de las víctimas.

Por favor, sírvase ofrecer todos los detalles sobre cualquier medida disciplinaria o judicial practicada en relación con los funcionarios de las fuerzas de seguridad, si alguno hubiera sido hallado responsable.

Por favor, sírvase proporcionar información sobre los resultados de la queja presentada por los familiares de las víctimas ante el Comité de Derechos Humanos de Nuevo Laredo.

Por favor, indique cualquier compensación que haya sido atribuida a la familia de las víctimas.

La muerte y las lesiones por arma de fuego en contra de 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

Violación alegada: Ataques o asesinato

Persona objeto del llamamiento: un grupo de defensores de derechos humanos, observadores internacionales y periodistas

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relatora Especial lamenta la falta de cooperación del Gobierno de México con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Llamamiento urgente con fecha 3 de mayo 2010, enviada junto con el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión; el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias; y la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con la muerte y las lesiones por arma de fuego en contra de 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.

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.

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.

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.

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.

Se expresa 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.

Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de extrema vulnerabilidad e inseguridad para los periodistas y defensores de los derechos humanos en México. Quisiera recordar al Gobierno de su Excelencia que tiene la responsabilidad de garantizar la seguridad e integridad de los periodistas y defensores de los derechos humanos y de tomar las medidas que sean necesarias para asegurar que ninguna violación contra un defensor de los derechos humanos queda en la impunidad.

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

Además, nos permitimos hacer un llamamiento urgente al Gobierno de su Excelencia para que adopte las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 del Pacto Internacional de Derechos Civiles y Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

Asimismo, como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen "la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias (resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social)." En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, y el principio 9 prevé que los gobiernos conduzcan "una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias".

En este contexto, también quisiéramos recordar el artículo 2 del PIDCP el que prevé que "Toda persona cuyos derechos o libertades reconocidos en el presente Pacto hayan sido violados" dispondrá de "un recurso efectivo" y que "La autoridad competente, judicial, administrativa o legislativa, o cualquiera otra autoridad competente prevista por el sistema legal del Estado, decidirá sobre los derechos de toda persona que interponga tal recurso, y

desarrollará las posibilidades de recurso judicial”. Asimismo, la Observación General 31 al PIDCP del Comité de Derechos Humanos prevé que “los Estados Parte infringen estos derechos permitiendo que particulares o entidades cometan tales actos o no adoptando las medidas apropiadas o no ejerciendo el cuidado debido para prevenir, castigar, investigar o reparar el daño así causado”.

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

Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 6, apartado a), establece que toda persona tiene derecho, individualmente y con otras, a conocer, recabar, obtener, recibir y poseer información sobre todos los derechos humanos y libertades fundamentales, con inclusión del acceso a la información sobre los medios por los que se da efecto a tales derechos y libertades en los sistemas legislativo, judicial y administrativos internos;

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

Consideramos también apropiado hacer referencia a la resolución 12/16 del Consejo de Derechos Humanos, la cual insta a los estados a que garanticen que las víctimas de violaciones al derecho a la libertad de expresión puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia, así como los actos terroristas, dirigidos contra los periodistas, incluso en situaciones de conflicto armado, y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad.

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

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

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención.

En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Ha sido presentada alguna queja por parte de las supuestas víctimas o en su nombre?
3. Por favor, sírvanse proporcionar información detallada, así como los resultados si están disponibles, de cualquier investigación, examen médico y judicial u otro tipo de pesquisa que se haya llevado a cabo respecto de este caso.
4. Por favor, sírvanse proporcionar información detallada sobre las diligencias judiciales que se hayan iniciado con relación a este caso. ¿Se ha impuesto alguna sanción penal, disciplinaria o administrativa a los supuestos culpables/ perpetradores?
5. Por favor, indiquen si de confirmarse las alegaciones arriba mencionadas se proporcionaría compensación a las víctimas o a sus familias.

El Sr. Ernesto Rábago Martínez y su familia, en particular su esposa, la Sra. Estela Ángeles Mondragón

Violación alegada: Ataques o asesinatos, amenazas de muerte

Persona objeto del llamamiento: 1 hombre, 1 mujer

Carácter de la respuesta: Cooperativa pero incompleta

Observaciones del Relator Especial

El Relator Especial agradece la respuesta proporcionada por parte del Gobierno México. Sin embargo, el Relator Especial muestra su grave preocupación por el asesinato del Sr. Rábago Martínez y por la integridad física y psicológica de su familia y teme que los hechos pudieran estar relacionados con su labor en la defensa de los derechos humanos, en particular, en la promoción de los derechos de las comunidades indígenas.

Llamamiento urgente con fecha 16 de mayo de 2010, enviada junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Su Gobierno la información que hemos recibido en relación al Sr. Ernesto Rábago Martínez y su familia, en particular su esposa, la Sra. Estela Ángeles Mondragón. El Sr. Rábago Martínez era integrante de Bowerasa (Haciendo Camino), una organización civil que apoya a las comunidades indígenas de la región de la Sierra de Tarahumara que se encuentra ubicada en el municipio de Carichí, en el estado de Chihuahua. Bowerasa trabaja por los derechos territoriales, culturales, a la salud y a la educación de las comunidades indígenas en el contexto de la presencia militar y los proyectos turísticos y mineros de la región. La Sra. Ángeles Mondragón también es miembro de Bowerasa.

El Sr. Rábago Martínez y la Sra. Ángeles Mondragón trabajaban juntos como abogados y participaban en el Programa Interinstitucional de Apoyo al Indígena (PIAI) y en la Mesa de Justicia y Derechos Humanos. Asimismo, el Sr. Rábago Martínez y la Sra. Ángeles Mondragón representaban a las comunidades indígenas en varios litigios agrarios, sobre todo en los casos de ocupación forzada de sus tierras por personas no indígenas. Recientemente, la pareja habría representado a la comunidad indígena Raramuri del pueblo de Bakéachi, en Carichí, Chihuahua. El 5 de febrero de 2010, el Tribunal Unitario Agrario de Chihuahua, presidido por la Dra. Imelda Carlos Basurto, habría dictaminado en un fallo de apelación que un grupo de ganaderos tenía que restituir varias tierras disputadas a la comunidad Raramuri, al considerar esta ocupación ilegal.

De acuerdo con las informaciones recibidas

El 2 de marzo de 2010, aproximadamente a las 22.30 horas, el Sr. Rábago Martínez habría sido asesinado en su oficina, ubicada en la intersección de las calles Allende y 23, Colonia Obrera en Chihuahua. Se sospecha que personas no identificadas entraron en la oficina que el Sr. Rábago Martínez compartía con la Sra. Ángeles Mondragón y mataron a tiros al Sr. Rábago Martínez. Su cadáver y un cartucho de bala del calibre 25 fueron encontrados en la oficina tras el ataque.

El Sr. Rábago Martínez, la Sra. Ángeles Mondragón y su familia habrían sufrido actos de acoso e intimidación en los años previos a este incidente. El 18 de febrero de 2010, la Sra. Deni Ruth Loya Ángeles, hija del Sr. Rábago Martínez y la Sra. Ángeles Mondragón, y su hija de trece años habrían sido objeto de un intento de asesinato. Aproximadamente a las 19.30 horas de ese mismo día, la Sra. Loya Ángeles y su hija se encontraban en su coche Nissan Platina 2005 a las afueras de su domicilio, cuando personas no identificadas habrían disparado al coche. La Sra. Loya Ángeles habría recibido un impacto de bala en el antebrazo derecho mientras que su hija habría salido ilesa. La Sra. Loya Ángeles informó que inmediatamente después del ataque vio a dos hombres jóvenes huyendo de la escena. Un cartucho de bala del calibre 25 fue hallado tras el incidente.

El 28 de marzo de 2009 dos aparatos explosivos de fabricación casera habrían sido arrojados al interior de la oficina del Sr. Rábago Martínez y la Sra. Ángeles Mondragón, provocando un incendio en sus instalaciones. Asimismo, la pareja habría denunciado varias amenazas y actos de intimidación. Se habría presentado una denuncia sobre el ataque en contra de la Sra. Loya Ángeles ante la Procuraduría General de Justicia del Estado y ante el Secretario General de Gobierno del Estado de Chihuahua, Lic. Sergio Granados Pineda. Sin embargo, se informó que no se habría iniciado ninguna investigación y que las autoridades no habrían vinculado el ataque con las actividades de los padres de la víctima. Asimismo, ninguna de las medidas de protección que beneficiaban al Sr. Rábago Martínez, a la Sra. Ángeles Mondragón y a sus familiares habrían sido implementadas.

Se teme que el asesinato del Sr. Rábago Martínez y las amenazas y actos de intimidación contra la Sra. Ángeles Mondragón y sus familiares estén relacionados con las actividades que realizaban para promover y defender los derechos de grupos indígenas. Se expresa una profunda preocupación por la integridad física y psicológica de la Sra. Ángeles Mondragón y sus familiares. Estos actos de intimidación, amenazas y asesinato, de ser confirmados, se enmarcan en un contexto de gran vulnerabilidad para los defensores de los derechos humanos en México. Quisierámos recordarle al Gobierno de su Excelencia que tiene la responsabilidad de garantizar la seguridad de los defensores de los derechos humanos y de tomar las medidas necesarias para asegurar que ninguna violación contra un defensor de los derechos humanos quede en la impunidad.

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

Además, quisiéramos referirnos a los artículos siguientes:

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

-el artículo 9, párrafo 3, apartado c), establece que toda persona tiene derecho, individual o colectivamente, entre otras cosas, a ofrecer y prestar asistencia letrada profesional u otro asesoramiento y asistencia pertinentes para defender los derechos humanos y las libertades fundamentales.

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

En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar a su Gobierno a que adopte todas las medidas necesarias para proteger la independencia del poder judicial, en especial la de los jueces provisorios. Quisiéramos asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos.

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

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

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

¿Son exactos los hechos a los que se refieren las alegaciones presentadas?

¿Fue presentada alguna queja?

Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales llevadas a cabo en relación con el caso. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables de las violaciones de los

derechos humanos? Si no se han realizado diligencias judiciales y administrativas respecto al caso, le rogamos que explique por qué.

Por favor proporcione información detallada sobre las medidas de protección adoptadas para asegurar la integridad física y psicológica de los defensores de derechos humanos anteriormente mencionados y sus familiares.

Respuesta del Gobierno

Mediante carta con fecha 7 de junio de 2010, el Gobierno transmitió una respuesta a la comunicación con fecha 16 de mayo de 2010.

De acuerdo a la información proporcionada por la Procuraduría General de Justicia del estado de Chihuahua (PGJ Chih), el señor Rábago Martínez fue asesinado el 1 de marzo de 2010 cuando se encontraba en sus oficinas. Con motivo de esos hechos, el Ministerio Público inició la averiguación previa 3827/2010 por el delito de homicidio.

La Comisión Estatal de Derechos Humanos del estado de Chihuahua inició de oficio la queja RAMD 084/2010, la cual se encuentra en trámite.

Las primeras diligencias judiciales practicadas por la PGJ Chih fueron las siguientes:

- levantamiento del cadáver,
- inspección ocular del lugar de los hechos,
- certificación de la causa de muerte,
- recolección de objetos hallados en el lugar de los hechos,

La investigación continúa abierta para su perfeccionamiento.

En el mes de marzo de 2010, el Secretario General de Gobierno del estado de Chihuahua se reunió con el Subprocurador General de Justicia, el Subprocurador de Justicia Zona Centro, el Coordinador de la unidad de delitos contra la vida y el Ministerio Público de la PGJ Chih, con la participación de la señora Estela Ángeles Mondragón, en atención a la gravedad de los hechos.

En esa reunión las autoridades estatales le ofrecieron las medidas para su protección y para su hija, a lo cual la beneficiaria permanece pendiente de dar su consentimiento; a la fecha únicamente ha accedido a recibir los servicios de un especialista en terapia psicológica.

Morocco

Recours excessif à la force

Violation alléguée: Décès résultant d'un recours excessif à la force par des forces de l'ordre ou personnes agissant sous les instructions directes ou indirectes de l'Etat, dans les cas où le recours à la force est incompatible avec les critères de nécessité absolue et proportionnalité.

Objet de l'appel: A.-N. a.-K., un garçon âgé de 14 ans

Caractère de la réponse: Réponse largement satisfaisante

Observations du Rapporteur spécial

Le Rapporteur spécial remercie le Gouvernement de sa réponse détaillée sur les circonstances des incidents des 24 et 25 octobre 2010. Cependant, le Rapporteur spécial saurait gré au Gouvernement de lui fournir d'apporter des clarifications au sujet des allégations selon lesquelles l'accès au camp Gdeim Izik serait interdit à ceux qui veulent

apporter des vivres aux manifestants, ainsi qu'aux journalistes et aux activistes nationaux et étrangers ; ainsi qu'au sujet de l'assaut du camp par les forces de sécurité le 8 novembre 2010, qui aurait fait de nombreux morts et des blessés des deux côtés.

Lettre d'allégation envoyée le 12 novembre 2010, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression.

Dans ce contexte, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur des informations que nous avons reçues concernant la situation d'un **groupe de personnes sahraouies, notamment sur le décès d'A.-N. a.-K., un garçon âgé de 14 ans.**

Selon les informations reçues

Le 24 octobre 2010, plusieurs personnes sahraouies, dont A.-N. a.-K., 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. A-N a-K. aurait été tué et plusieurs personnes auraient été blessées.

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 A.-N. a.-K. 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'A.-N., 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.

Le 25 octobre 2010, A.-N. 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.

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.

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.

Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous voudrions attirer l'attention du Gouvernement de votre Excellence aux principes fondamentaux applicables en vertu du droit international en l'espèce. En particulier, on voudrait référer à l'article 3 de la Déclaration universelle des droits de l'Homme et à l'article 6 du Pacte international relatif aux droits civils et politiques, qui stipulent que tout individu a le droit à la vie et à la sûreté de sa personne, que ce droit doit être protégé par la loi, et que nul ne peut être arbitrairement privé de la vie. En outre, l'article 6 de la Convention relative aux droits de l'enfant reconnaît que tout enfant a un droit inhérent à la vie.

Nous voudrions rappeler au Gouvernement de votre Excellence l'applicabilité dans de telles situations des Principes de base sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois, adoptés par le huitième Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants qui s'est tenu à La

Havane (Cuba) du 27 août au 7 septembre 1990. En particulier, le principe 4 prévoit que : « Les responsables de l'application des lois, dans l'accomplissement de leurs fonctions, auront recours autant que possible à des moyens non violents avant de faire usage de la force ou d'armes à feu ». Également, le principe 5 établit que : « Lorsque l'usage légitime de la force ou des armes à feu est inévitable, les responsables de l'application des lois : a) En useront avec modération et leur action sera proportionnelle à la gravité de l'infraction et à l'objectif légitime à atteindre; b) S'efforceront de ne causer que le minimum de dommages et d'atteintes à l'intégrité physique et de respecter et de préserver la vie humaine; c) Veilleront à ce qu'une assistance et des secours médicaux soient fournis aussi rapidement que possible à toute personne blessée ou autrement affectée; d) Veilleront à ce que la famille ou des proches de la personne blessée ou autrement affectée soient avertis le plus rapidement possible. En plus, le principe 9 prévoit que les responsables de l'application des lois ne doivent pas faire usage d'armes à feu contre des personnes, sauf en cas de légitime défense ou pour défendre des tiers contre une menace imminente de mort ou de blessure grave..... et seulement lorsque des mesures moins extrêmes sont insuffisantes pour atteindre ces objectifs. Quoi qu'il en soit, ils ne recourront intentionnellement à l'usage meurtrier d'armes à feu que si cela est absolument inévitable pour protéger des vies humaines.

Nous voudrions également rappeler au Gouvernement de votre Excellence que le Conseil des droits de l'homme a, dans sa résolution 8/3 sur le mandat du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, rappelé que « tous les états ont l'obligation de mener des enquêtes exhaustives et impartiales sur tous les cas présumés d'exécutions extrajudiciaires, sommaires ou arbitraires. » Le Conseil ajouta que cette obligation comprend l'obligation « d'adopter toutes les mesures nécessaires, notamment d'ordre législatif et judiciaire, afin de mettre un terme à l'impunité et d'empêcher la répétition de telles pratiques, comme le prévoient les Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions. Notamment, le principe n° 1 prévoit que « Des circonstances exceptionnelles, notamment l'état de guerre ou la menace de guerre, l'instabilité politique à l'intérieur du pays ou toute autre situation d'urgence publique, ne pourront être invoquées comme justification de ces exécutions » [et que] « De telles exécutions ne devront pas avoir lieu, quelles que soient les circonstances... ».

Nous souhaiterions également rappeler au Gouvernement de votre Excellence, les normes et principes fondamentaux pertinents énoncés à l'article 19 du Pacte International relatif aux droits civils et politiques, qui précise que « [t]out individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considérations de frontières, les informations et les idées par quelque moyen d'expression que ce soit ».

Nous souhaiterions aussi appeler le Gouvernement de votre Excellence à prendre toutes les mesures nécessaires pour s'assurer que le droit de réunion pacifique tel qu'énoncé à l'article 21 du Pacte International sur les droits civils et politiques, qui prévoit que « [l]e droit de réunion pacifique est reconnu. L'exercice de ce droit ne peut faire l'objet que des seules restrictions imposées conformément à la loi et qui sont nécessaires dans une société démocratique, dans l'intérêt de la sécurité nationale, de la sûreté publique, de l'ordre public ou pour protéger la santé ou la moralité publiques, ou les droits et les libertés d'autrui », soit respecté.

Dans le cas où vos enquêtes appuient ou suggèrent l'exactitude des allégations susmentionnées, nous prions le Gouvernement de votre Excellence de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés des individus mentionnés, de diligenter des enquêtes sur les violations perpétrées et de traduire les

responsables en justice. Nous prions aussi le Gouvernement de votre Excellence d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

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

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?
2. Quelles sont les branches des forces de sécurité impliquées au cours de ces événements ? Quels ordres ou instructions avaient-elles reçus, notamment quant à l'usage de la force ?
3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.
4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs ou responsables des violations.

Réponse du Gouvernement en date du 1 février 2011

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 étant dans un état d'ébriété avancé, semait la terreur parmi les campeurs.

Le 24 octobre 2010 vers 17h30, le susnommé accompagné par six personnes dont le mineur N. E.G. 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.

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.

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.

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 N. E. G. a succombé à ses blessures.

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.

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.

Concernant les allégations selon lesquelles la famille de N. E. G. 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.

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 samourāï ; 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.

Recours excessif à la force

Violation alléguée: Décès résultant d'un recours excessif à la force par des forces de l'ordre ou personnes agissant sous les instructions directes ou indirectes de l'Etat, dans les cas où le recours à la force est incompatible avec les critères de nécessité absolue et proportionnalité.

Objet de l'appel: groupes de personnes, y compris des personnes sahraouies et 11 membres des forces de l'ordre et 2 civils

Caractère de la réponse: Pas de réponse

Observations du Rapporteur spécial

Le Rapporteur spécial regrette que le Gouvernement du Gabon n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.

Lettre d'allégation envoyée le 3 février 2011, envoyée conjointement avec 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 ; 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.

Dans ce contexte, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur des informations que nous avons reçues concernant **les incidents relatifs au démantèlement du camp Gdeim Izik situé dans le désert à quelques kilomètres d'El-Ayoun, au Sahara occidental, survenus en novembre 2010.**

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-Ayoun et aurait entraîné la mort de 11 membres des forces de l'ordre et de 2 civils.

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.

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.

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.

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.

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.

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.

Par ailleurs, nous souhaiterions également attirer l'attention du Gouvernement de votre Excellence sur les allégations de violations ci-après:

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.

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.

Une commission d'enquête aurait été ouverte par le Parlement marocain sur le démantèlement du camp et les événements qui l'ont suivi.

Nous souhaiterions intervenir auprès du Gouvernement de votre Excellence pour tirer au clair les circonstances ayant provoqué les faits allégués ci-dessus, afin que soit protégée et respectée l'intégrité physique et mentale des personnes précitées et ce, conformément aux dispositions pertinentes de la Déclaration universelle des droits de l'homme, du Pacte international relatif aux droits civils et politiques et de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants. Nous souhaiterions aussi attirer l'attention du Gouvernement de votre Excellence sur l'Ensemble des règles minima pour le traitement des détenus, approuvé par le Conseil économique et social dans ses résolutions 663 C (XXIV) du 31 juillet 1957, et 2076 (LXII) du 13 mai 1977, en particulier les règles 22, 25 et 26.

Concernant les incidents relatifs au démantèlement du camp Gdeim Izik par des personnes sahraouies afin de protester contre leurs conditions sociales et économiques, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur les principes fondamentaux pertinents énoncés à l'article 19 du Pacte international relatif aux droits civils et politiques, qui précise que: « tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considérations de frontières, les informations et les idées par quelque moyen d'expression que ce soit ». De plus, nous voudrions appeler le Gouvernement de votre Excellence à prendre toutes les mesures nécessaires pour s'assurer que le droit de réunion pacifique tel qu'énoncé à l'article 21 du Pacte international sur les droits civils et politiques, qui prévoit que « le droit de réunion pacifique est reconnu. L'exercice de ce droit ne peut faire l'objet que des seules restrictions imposées conformément à la loi et qui sont nécessaires dans une société démocratique, dans l'intérêt de la sécurité nationale, de la sûreté publique, de l'ordre public ou pour protéger la santé ou la moralité publiques, ou les droits et les libertés d'autrui », soit respecté.

A cet égard, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur les principes fondamentaux énoncés dans la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 1 et 2 qui stipulent que « chacun a le droit, individuellement ou en association avec d'autres, de promouvoir la protection et la réalisation des droits de l'homme et des libertés fondamentales aux niveaux national et international » et que « chaque État a, au premier

chef, la responsabilité et le devoir de protéger, promouvoir et rendre effectifs tous les droits de l'homme et toutes les libertés fondamentales, notamment en adoptant les mesures nécessaires pour instaurer les conditions sociales, économiques, politiques et autres ainsi que les garanties juridiques voulues pour que toutes les personnes relevant de sa juridiction puissent, individuellement ou en association avec d'autres, jouir en pratique de tous ces droits et de toutes ces libertés ».

De même, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur les dispositions suivantes contenues dans la Déclaration sur les défenseurs des droits de l'homme:

- l'article 5, a) selon lequel, afin de promouvoir et protéger les droits de l'homme et les libertés fondamentales, chacun a le droit, individuellement ou en association avec d'autres, aux niveaux national et international de se réunir et de se rassembler pacifiquement; et

- l'article 12, paras. 2 et 3, qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

Concernant les allégations d'usage excessif de la force, nous souhaiterions rappeler au Gouvernement de votre Excellence l'applicabilité dans de telles situations des Principes de base sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois, adoptés par le huitième Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants qui s'est tenu à La Havane (Cuba) du 27 août au 7 septembre 1990. En particulier, le principe 4 prévoit que : « Les responsables de l'application des lois, dans l'accomplissement de leurs fonctions, auront recours autant que possible à des moyens non violents avant de faire usage de la force ou d'armes à feu ». Le principe 5 stipule que: « Lorsque l'usage légitime de la force ou des armes à feu est inévitable, les responsables de l'application des lois: a) En useront avec modération et leur action sera proportionnelle à la gravité de l'infraction et à l'objectif légitime à atteindre; b) S'efforceront de ne causer que le minimum de dommages et d'atteintes à l'intégrité physique et de respecter et de préserver la vie humaine; c) Veilleront à ce qu'une assistance et des secours médicaux soient fournis aussi rapidement que possible à toute personne blessée ou autrement affectée; d) Veilleront à ce que la famille ou des proches de la personne blessée ou autrement affectée soient avertis le plus rapidement possible. En outre, le principe 9 prévoit que les responsables de l'application des lois ne doivent pas faire usage d'armes à feu contre des personnes, sauf en cas de légitime défense ou pour défendre des tiers contre une menace imminente de mort ou de blessure grave..... et seulement lorsque des mesures moins extrêmes sont insuffisantes pour atteindre ces objectifs. Quoi qu'il en soit, ils ne recourront intentionnellement à l'usage meurtrier d'armes à feu que si cela est absolument inévitable pour protéger des vies humaines.

Nous voudrions également rappeler au Gouvernement de votre Excellence que le Conseil des droits de l'homme a, dans sa résolution 8/3 sur le mandat du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, rappelé que « tous les états ont l'obligation de mener des enquêtes exhaustives et impartiales sur tous les cas présumés d'exécutions extrajudiciaires, sommaires ou arbitraires. » Le Conseil ajouta que cette obligation comprend l'obligation « d'adopter toutes les mesures nécessaires, notamment d'ordre législatif et judiciaire, afin de mettre un terme à l'impunité et d'empêcher la

réitération de telles pratiques, comme le prévoient les Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions. Par ailleurs, le principe 1 précise que « Des circonstances exceptionnelles, notamment l'état de guerre ou la menace de guerre, l'instabilité politique à l'intérieur du pays ou toute autre situation d'urgence publique, ne pourront être invoquées comme justification de ces exécutions » [et que] « De telles exécutions ne devront pas avoir lieu, quelles que soient les circonstances... »

Dans le cas où vos enquêtes appuient ou suggèrent l'exactitude des allégations susmentionnées, nous prions le Gouvernement de votre Excellence de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés des individus mentionnés, de diligenter des enquêtes sur les violations perpétrées et de traduire les responsables en justice. Nous prions aussi le Gouvernement de votre Excellence d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

Nous souhaiterions aussi attirer l'attention du Gouvernement de votre Excellence sur les provisions contenues dans le Pacte international relatif aux droits économiques, sociaux et culturels, que le Maroc a ratifié. L'article 11.1 affirme que « les Etats parties au présent Pacte reconnaissent le droit de toute personne à un niveau de vie suffisant pour elle-même et sa famille, y compris une nourriture, un vêtement et un logement suffisants, ainsi qu'à une amélioration constante de ses conditions d'existence ».

Dans l'Observation Générale No. 4, sur le droit à un logement suffisant, adoptée par le Comité de droits économiques, sociaux et culturels en 1991, il est reconnu que :

« 6. Le droit à un logement suffisant s'applique à tous... les individus, comme les familles, ont droit à un logement convenable sans distinction d'âge, de situation économique, d'appartenance à des groupes ou autres entités ou de condition sociale et d'autres facteurs de cette nature. Notamment, la jouissance de ce droit ne doit pas, en vertu du paragraphe 2 de l'article 2 du Pacte, être soumise à une forme quelconque de discrimination ».

« 8. a) Quel que soit le régime d'occupation, chaque personne a droit à un certain degré de sécurité qui garantit la protection légale contre l'expulsion, le harcèlement ou autres menaces. Les Etats parties doivent par conséquent prendre immédiatement des mesures en vue d'assurer la sécurité légale de l'occupation aux individus et aux familles qui ne bénéficient pas encore de cette protection, en procédant à de véritables consultations avec les personnes et les groupes concernés ».

Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des droits de l'homme, nous serions reconnaissants au Gouvernement de votre Excellence de ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation?
2. Quelles sont les branches des forces de sécurité impliquées au cours de ces événements? Quels ordres ou instructions avaient-elles reçu, notamment quant à l'usage de la force?
3. Au cas où une plainte a été déposée, quelles suites lui ont été données?
4. Veuillez nous fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.

5. Quelles mesures ont-elles été prévues pour s'assurer que les personnes affectées ne deviennent pas des sans-abri ? A-t-on offert aux personnes affectées des compensations pour la destruction de leurs maisons and la perte de leurs biens et effets personnels?

Mozambique

Excessive use of force during demonstrations

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 6 individuals

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 15 September 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions

While I express my condolences to you and the people of Mozambique for the suffering caused in relation to the food crisis, I would like to bring to your Excellency's Government's attention information I have received concerning **the death of at least six people** during violent demonstrations in Maputo.

According to information received

On 1 September 2010, there were protests in the outskirts Maputo over rising costs of commodities in the country. The protesters barricaded roads and threw stones. In attempting to bring the situation under control the police used live ammunition which resulted in the death of at least six people, including two minors, and in the injury of several others.

I am concerned with reports that there is a pattern of excessive use of force by security officials in policing demonstrations. My predecessor, in a communication dated 12 September 2008, raised concern on nine incidents, involving 18 victims, of allegedly arbitrary killings by the police. No response from your Excellency's Government has yet to be received.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Excellency's Government to the fundamental principles applicable under international law in relation to the concerns raised. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), to which Mozambique is a party, recognizes that every human being has the right not to be arbitrarily deprived of his or her life. In this regard the Human Rights Committee has said that "It is the supreme right from which no derogation...The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

I am aware that your Excellency's Government had to take measures to bring the security situation under control, however any measures that are adopted have to strictly comply with international obligations that have been undertaken by your Excellency's Government.

International human rights law 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. I would note the relevance in this cases of the United Nations Basic Principles on the Use of Force and Firearms by Law Officials (Basic Principles) which provides that intentional lethal use of firearms may only be made when strictly unavoidable (para. 9). Additionally, principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, principle 5 provides that, "[w]hen the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment [...]." Besides, article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

In a report submitted by the mandate on extrajudicial executions to the General Assembly at its sixty first session, it was noted that 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. 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" (A/61/311, paras 41- 45).

I would like to bring to the attention of your Excellency's Government principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which requires States to conduct a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

I urge your Excellency's Government to take all necessary measures to ensure that the deaths of the six protestors are promptly, independently and thoroughly investigated, to ensure the accountability of any person responsible for their deaths and to prevent further recurrence of such acts.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details and, where available, the results of any criminal investigation, prosecution and trial carried out in relation to deaths that occurred during the protests.

3. What steps are being taken to hold those responsible for these killings, both as material perpetrators and as commanders or instigators, criminally accountable?
4. Please indicate whether compensation will be provided to the families of the victims.
5. Please indicate what broader steps, if any, are being taken to address the use of force by the security forces, including measures that are taken to comply with the rules and principles pertaining to proportionality and necessity.

I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

Myanmar

Excessive use of force by security officials

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 2 women and 2 children

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation lettered dated 19 April 2010 sent with the Special Rapporteur on the situation of human rights in Myanmar.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **killings of Naw La Pwey, Naw Paw Bo, and Saw Hta Pla Htoo** by soldiers from the Myanmar Light Infantry Battalion.

According to information received

On 22 March 2010, Naw Pah Lah a Ko Lu villager was travelling in the company of Naw Paw Bow, her 5 year old daughter and Saw Hta Pla Htoo, her 5 month old son. As she neared Kaw Hta village, soldiers from Myanmar Light Infantry Battalion 369 (Military Operations Command 10) attacked them. Naw Paw Bo was shot in the head and died immediately. Her mother fled from the scene to save her life and that of her son. Naw Pah Lah was shot in the back and her son Ta Pla Htoo, whom she was carrying, was shot in the thigh. He died two and a half hours later. Naw Paw Bo's body was later found in the bushes with the trail of her blood partially covered with dry leaves.

We are informed that during the attack a woman named Naw La Pwey, was also shot and killed.

Further the soldiers burned down about eleven houses in the village. We are informed that these are ongoing attacks that have been happening in the area since January 2010, and which have left over 3000 people displaced.

We would like to take this opportunity to acknowledge your response dated 5 March 2010, concerning the deaths of Mr. Saw Win Thein, aged 40, and Mr. Doung Nyo, aged 26 years,

which indicates that the deaths were resulted from military operations. It is not clear from the information provided by your Excellency's Government, whether these deaths occurred in the context of law enforcement operations or of a military conflict. In either case, we would welcome further information from your Excellency's Government indicating the circumstances in which Mr. Saw Win Thein and Mr. Doung Nyo were killed and the measures that were taken to ensure compliance with the rules and principles pertaining to proportionality and necessity.

With regard to the allegations summarized above, while we do not wish to prejudge the accuracy of these allegations, we would like to request your Excellency's Government to seek clarification of the circumstances regarding the deaths. In this connection, we would like to refer your Excellency's Government to the fundamental principles applicable under international law to this case. The United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary executions, in particular Principle 9, stipulate that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions..." This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". Further Principle 17 ("Prevention and Investigation Principles") provides that "[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law."

On the use of force by law enforcement officers, we would like to bring to the attention of your Excellency's Government the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles"), which requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

The Special Rapporteur on extrajudicial executions has presented in detail in his report presented to the General Assembly at its sixty first session that 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. 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" (A/61/311, paras 41- 45).

We urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of Naw La Pwey, Naw Paw Bo, and Saw Hta Pla Htoo, with a view to taking all appropriate disciplinary and prosecutorial action and

ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

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

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of Naw La Pwey, Naw Paw Bo, and Saw Hta Pla Htoo.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to Army officers found responsible.

Please indicate whether compensation has been provided to the families of the victims.

Please indicate what broader steps, if any, are being taken to address the use of force by the army during military operations, including measures that are taken to abide with the rules and principles pertaining to proportionality and necessity in during such operations.

Nepal

Killing of Mr. Dhital –Human Rights Defender

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State.

Subject(s) of appeal: 2 Males (Human Rights Defenders)

Character of reply: “Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the Government of Nepal indicating that investigations into the case are on-going. He urges the Government to ensure that the perpetrators of the crime are brought to justice and he looks forward to receiving further information on the progress of the case.

Allegation letter dated 31 August 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we would like to bring to your Excellency’s Government’s attention information we have received regarding the death of **Mr. Devi Prasad Dhital**, also known as Hemraj, chairman of community radio Tulsipur FM.

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.

It is alleged that Mr. Devi Prasad Dhital is the third media owner to be killed this year.

While the motive behind the killing of Mr. Dhital is yet to be confirmed, concern is 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.

While we do not wish to prejudge the accuracy of these allegations, we would like to seek clarification of the circumstances regarding the death of Mr. Devi Prasad Dhital from your Excellency's Government.

We would like to refer your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons.

We welcome the steps that your Excellency's Government has taken to investigate the killing of Mr. Devi Prasad Dhital. We would like to bring to the attention of your Excellency's Government, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular Principle 18 which stipulates 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." This principle was reiterated by the Human Rights Council in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". The Special Rapporteur on extrajudicial, summary or arbitrary executions has noted in a report to the Commission on Human Rights that "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.)

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

In addition, we deem it appropriate to make reference to Resolution 12/16 of the Human Rights Council which calls upon States to ensure that victims of violations of the right to freedom of expression and opinion have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of journalists in Nepal are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the shooting of Mr. Devi Prasad Dhital. Please indicate whether compensation has been or will be provided to the families of the victim.
3. Please indicate what measures are in place to provide protection to journalists especially in the eastern and western regions of Nepal.

Government reply dated 20 January 2011

Regarding the death of Mr. Devi Prasad Dhital, the Permanent Mission of Nepal to the United Nations and Other International Organizations in Geneva has the honour to transmit the response of the Government of Nepal as follows:

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, HemnagarJaspur, Dang District, Nepal, when Mr. Devi 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.

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.

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.

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.

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.

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 the matters of state priority. The Government of Nepal has been streamlining its plans, policies and programmes accordingly. As the current state system is being led by the forces that had also led the peoples' moment while keeping democracy and protection 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.

The Permanent Mission of Nepal to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, Special Procedures of the Human Rights Council, the assurances of its highest consideration.

Nepal: Death in custody of Mr. Sunar

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 6 July 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the death in custody of **Mr. Sanu Sunar**, aged 46.

According to the information received

Mr. Sanu Sunar was arrested on 23 May 2010, based on a complaint of theft, and taken to Kalimati Police Station in Kathmandu. At the time of arrest, two other persons were taken into custody, but were later released. Mr. Sunar was kicked and beaten by the police for several hours, including in front of his wife. When she asked the police to stop the beatings, the police threatened to torture her as well. At midnight on the same day, Mr. Sunar was taken to Bir Hospital. He was vomiting blood, had difficulties breathing and had marks from the beatings on his hands, legs and face. On 25 May, Mr. Sunar died. The doctors involved in his treatment indicated that the cause of death was head trauma.

While we do not wish to prejudice the accuracy of the allegations, we would like to draw your Excellency Government's attention to the fundamental principles applicable under international law to these cases. Article 7 of the International Covenant on Civil and Political Rights, to which Nepal is a party, provides that "[n]o one shall be subjected to

torture or to cruel, inhuman or degrading treatment or punishment.” Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (see, for instance, the Human Rights Committee’s views in the case of *Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2).

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

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

We urge your Excellency Government’s to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of Mr. Sunar, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his family. In this respect we note that Human Rights Council Resolution 8/8, paragraph 6 (b) and (e), urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate acts of torture [...], to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed”.

We urge your Excellency’s Government to take all necessary measures to ensure a prompt and effective investigation into the death in custody of Mr. Sunar, as well as to ensure that the perpetrators are brought to justice we also request that your Excellency Government’s adopts effective measures to prevent the recurrence of these acts.

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

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

5. Please indicate whether compensation has been provided to the victim or the family of the victim.

Nigeria

killing of children suspected of witchcraft

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private cooperating with or tolerated by the State and Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures.

Subject(s) of appeal: Group concern and 1 Human Rights Defender

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 20 December 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 8/3 and 8/8.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the allegations of torture and killing of children suspected of witchcraft in Akwa Ibom State and death threats against Mr. Sam Itauma**, the coordinator of a local NGO that cares for children accused of witchcraft.

According to information available to us

Children are accused of witchcraft by self proclaimed "prophets" of spiritual churches, parents and local communities. When a child is deemed to be a witch, the child is subjected to an exorcism exercise and undergoes various forms of physical torture. For instance, in one case, hot water was poured on a child, in another, a child was doused in acid and in a third instance a nail was drilled into the child's skull. Some of the children die from the injuries sustained during the exorcism exercise.

Of particular concern, are the religious teachings being spread by "evangelical pastors and churches" including one known as the Liberty Foundation Gospel Ministries. The religious teachings claim that Satan (the devil) has the ability to manifest himself in the bodies of children through demonic possession and make them become his servants in the form of witches or wizards. We are informed that the Liberty Foundation Gospel Ministries has several publications such as "unveiling the mysteries of witchcraft" and has video productions such as "end of the wicked" which propagate the stigmatization and abuse of children accused of being witches.

In 2008, the Akwa Ibom State passed a child rights law which prescribes 15 years imprisonment without an option of a fine or both, for offenders in child stigmatization, accusation of witchcraft or torture. We are informed that the law is regularly not enforced. For example, a "Bishop" (his name is on file with us) who confessed in a television documentary to having killed about 110 children accused of witchcraft, was reportedly arrested and later released on bail. He is yet to be tried in court.

In August 2010, the State Governor is said to have been interviewed by CNN on the practice of abuse and killing of children accused of being witches. After the interview the State Governor accused Mr. Sam Itauma, the coordinator of an NGO known as Child Rehabilitation Network (CRARN) established to care for children accused of witchcraft, of exploiting the situation in order to make money. It is alleged that the State Governor announced that he had placed surveillance around the CRARN centre. Afterwards it is reported that gunmen fired shots at the CRARN facility. Mr. Sam Itauma is said to be currently in hiding, fearing for his life.

Further, information we have received indicates that on 22 November 2010, a commission was established to investigate claims into abuses of children accused of witchcraft. It is alleged that members of the commission were appointed by the State Governor. Concerns are expressed about the criteria used for the selection and appointment of members of the commissions, particularly, their ability to act independently of the Governor's control.

Without prejudging the accuracy of the information made available to us, we would like to express our concerns at the claims of abuse and killing of children accused of being witches. We would like respectfully to draw the attention of your Excellency's Government to several principles applicable to these issues under international law.

We would like to bring to the attention of your Excellency's Government the International Covenant on Civil and Political Rights (ICCPR) (acceded to in 29 July 1993) which provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (article 6). The Human Rights Committee has observed that this is a supreme right from which no derogation is permitted and that the protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance (General Comment 6).

With regard to the lack of investigation and prosecution of the perpetrators accused of the killings, we urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

We are concerned with the allegations of torture against children accused of being witches and we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this connection, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We urge your Excellency's Government to undertake investigations into the allegations of torture. In this connection we would also like to draw your Excellency's Government's attention to article 12 of the Convention against Torture, which requires the competent

authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention against Torture, which requires State parties to prosecute suspected perpetrators of torture. I would also like to draw your Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;"

We welcome the establishment of the commission to investigate the claims into abuses of children accused of witchcraft; commissions of inquiry can play an important role in combating impunity. We are concerned however, with the claims that the commission is viewed as not being independent. The Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in particular principle 11 provides that "In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles"

Further the mandate of the Special Rapporteur on extrajudicial executions has submitted in a report to the Human Rights Council (A/HRC/8/3) on "Commissions of Inquiry", the report may be of guidance to your Excellency's Government as it outlines international safeguards in the establishment of commissions of inquiry. The mandate has observed that "In order for a commission to address impunity, it must be independent, impartial and competent. The commission's mandate should give the necessary power to the commission to obtain all information necessary to the inquiry but it should not suggest a predetermined outcome. Commission members must have the requisite expertise and competence to effectively investigate the matter and be independent from suspected perpetrators and from institutions with an interest in the outcome of the inquiry. Commissions should be provided transparent funding and sufficient resources to carry out their mandate. Effective protection from intimidation and violence needs to be provided to witnesses and commission members" (A/HRC/8/3 para. 25.)

We are concerned at the reports that the abuse and killing of children are being incited by inter alia religious teachings. Your Excellency's Government has due diligence obligations to prevent such crimes and prosecute and punish perpetrators, including private actors and to take all available measures to prevent conduct which incites such crimes. The Human Rights Committee has observed that "the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.... There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties'

permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.” As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, “crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators.” (E/CN.4/2005/7, para. 71.)

With regard to the concerns that Mr. Sam Itauma is alleged to have been subjected to threats, we urge your Excellency’s Government to provide him with protection. In this regard, the Human Rights Committee has noted in the case of *William Eduardo Delgado Páez v. Colombia*, (Communication No. 195/1985) that “Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty. At the same time, States parties have undertaken to guarantee the rights enshrined in the Covenant. It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just because that he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant.” This was reiterated in the case of *Luis Asdrúbal Jiménez Vaca v. Colombia*, (CCPR/C/74/D/859/1999). Further, the principles on effective prevention and investigations of arbitrary, extra-legal and summary executions -- in particular principle 4 -- provide that “Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.”

Your Excellency’s Government’s attention is also drawn to paragraph 7 (b) of Resolution 8/8 of the Human Rights Council, which stated that “Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture.”

We urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths and torture of children accused of witchcraft with a view to taking all prosecutorial action and ensuring accountability of any person found guilty, as well as to compensate the family of the victims. We also request that your Excellency’s Government adopts immediate and effective measures to prevent the recurrence of these acts and to provide protection to the children who are under threat.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of the victims.
3. Please provide information on measures being taken to provide protection to Mr. Sam Itauma. Please also indicate what measures are in place to ensure protection of the right to life of children who are under threat in compliance with international human rights standards.

4. Have any investigations been undertaken to establish whether the alleged torture and killing of children accused of being witches are linked to the religious teachings. If yes, please provide the documentation of any the investigation and measures being taken to deter such conduct.
5. Please indicate what broad measures are being undertaken to address the killing of children accused of witchcraft.

Statement indicating that death row inmates be executed

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal:

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 28 April 2010, sent with the Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Government to information we have received regarding **the recent statement made by the Governor of south-eastern state of Abia that death row inmates should be executed to ease prison congestion**. We are informed that the statement was uttered at a meeting of thirty-six State governors held on 20 April 2010. According to information received, there are currently about 870 inmates on death row, including women and juveniles.

In this connection, we would like to draw your Government attention to two main substantive areas of concern relating to the above mentioned statement, which in our view, needs to be addressed urgently.

First, there have been concerns raised that the Nigerian criminal justice system does not guarantee fair trial, as reflected by the national study group on the death penalty in 2004 and by the presidential commission on the reform of the administration of justice in 2007. Furthermore, we were informed that most people have been sentenced to death following trials which did not conform to international fair trial standards.

The Special Rapporteur on extrajudicial, summary or arbitrary executions raised concern in his mission report to Nigeria with regard to widespread procedural irregularities in death penalty cases and conditions on death row. He indicated that torture is consistently used by the Nigeria police to extract confessions and that these confessions have often been critical to the conviction of persons charged with capital offences. Moreover many defendants in capital trials have effectively had no legal representation and legal aid is not available for appeals. (E/CN.4/2006/53/Add.4, para. 28).

Following his visit to the country in 2007, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment echoed these concerns pointing to his finding that torture and ill-treatment are widespread in police custody, and particularly systemic at criminal investigation departments, and that torture is frequently used for the purpose of obtaining confessions (A/HRC/7/3/Add.4, paras. 37 and 40).

These concerns, we are informed, continue to prevail in the criminal justice system. The majority of those on death row have been sentenced to death on the basis of confessional statements allegedly obtained under torture and some had no legal representation during trial or the preparation of the defense was often inadequate as counsel are not given timely access to the prosecution dossier.

We would like to remind your Government that Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” This provision reflects a principle of customary international law and was reiterated in paragraph 6c of Human Rights Council resolution 8/8 of 2008. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in article 5 of the Universal Declaration of Human Rights. Only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right.

Furthermore, we would like to refer your Government to article 14 3) of the International Covenant on Civil and Political Rights, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

The second area of concern relates to the allegation that the death penalty continues to be imposed for crimes committed when the convicted person was a juvenile at the time of commission of the offence. We wish to bring to the attention of your Government Article 37(a) of the Convention on the Rights of the Child, to which Nigeria is a Party, which expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Nigeria is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We are aware that the Nigerian Child’s Rights Act, adopted in 2003, defines a child as a person under the age of 18. However, the act is only applicable in the Federal Capital Territory and in the states of Abia, Anambra, Bayelsa, Eboniyi, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers, Taraba. Moreover, according to the Nigerian Criminal Procedure Act, a child is “any person who has not attained the age of 14 years” and a juvenile offender is defined as “an offender who has not attained the age of 17 years.” If the alleged crime is a capital offence, and the suspect cannot prove he was under the age of 14 at the time it was committed, it is common practice to assume that the person is an adult. We wish to bring to the attention of your Government that laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by Nigeria and should be promptly repealed.

We respectfully urge the Government of Nigeria to take all necessary steps to avoid executions that would be inconsistent with international human rights law and to ensure that the rights under international law of those on death row are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety. Furthermore we urge your Government to take steps to bring its legislation in compliance with Article 37(a)

of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political Rights.

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

1. Are the facts alleged in the summary of the case accurate?
2. Please provide information on the numbers of inmates on death row and the offences for which they were convicted.
3. Please indicate what measures are put in place to ensure that the provision contained in the Nigerian Criminal Procedure Act relating to the definition of a child is consistent with international human rights law. Please indicate what measures are in place to ensure that the Nigerian Child Rights Act is adopted in all federal states.
4. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made is implemented in Nigeria.
5. Please indicate what measures are put in place to ensure that due process guarantees are respected in accordance with international fair trial standards, including the right to be represented by legal counsel and the right to appeal a conviction and sentence.

Occupied Palestinian Territory

Imminent execution for non-serious crimes

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 11 males

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Occupied Palestinian Territory has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 29 April 2010, sent with Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw your attention to information we have received regarding the recent executions of Mr. **Mohammad Ismaeil (el Saba')** and Mr. **Nasser abu Freih** and the alleged imminent execution of several people who were sentenced to death by the Gaza Military Court.

According to information received

Mr. Mohammed Ibrahim Isma'il (al-Sabe'), aged 37 and a resident of Rafah, was sentenced to death on 3 November 2009, by the Gaza Military Court after he was convicted on charges of treason and involvement in a killing. He was partly convicted on the basis of his own confession which had allegedly been made as a result of torture.

Mr. Nasser abu Freih, aged 34, was sentenced to death by the Gaza Military Court on 22 February 2009, after being convicted of charges of “collaboration with hostile parties”.

It is reported that on 15 April 2010, the authorities in Gaza executed Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih.

We have also received information that since 2007 the Gaza Military Court has sentenced several people to death after being convicted on charges of treason. These people are at imminent risk of execution including:

- (1) Emad Mahmoud Sa'd Sa'd, aged 25, a resident of the West Bank who was sentenced to death on 28 April 2008;
- (2) Wael Saéed Sa'd Sa'd, aged 27, a resident of the West Bank who was sentenced to death on 15 July 2008;
- (3) Mohammad Sa'd Mahmoud Sa'd, a resident of the West Bank who was sentenced to death on 15 July 2008. He was tried in absentia;
- (4) Ayman Ahmad Awad Daghmah, aged 28, a resident of the West Bank who was sentenced to death on 12 November 2008;
- (5) Mahran Abu Jodah, aged 28, a resident of Hebron who was sentenced to death on 25 January 2009;
- (6) Anwar Bargheet, aged 59, a resident of Hebron who was sentenced to death 28 April 2009;
- (7) Saleem Mohammad El Nabheen aged 27, from Al-Boreij camp in Hebron who was sentenced to death 7 October 2009. He is currently being held at Gaza Central Prison;
- (8) Abed Kareem Mohammad Shrier, aged 35, from Gaza who was sentenced to death 29 October 2009. He is currently being held at Gaza Central Prison;
- (9) Izz El Din Rasem Abed El Salam Daghri, aged 38, who was sentenced to death on 9 November 2009, after being convicted on charges of treason.

We have previously addressed a communication dated 16 November 2009, to the authorities in Gaza regarding the case of Saleem Mohammed Saleem al-Nabahin, who was sentenced to death by a military court in Gaza, to which we are yet to receive a response. In that communication we expressed concern regarding imposition of the death penalty on grounds of treason and the provisions of Article 131 of the Revolutionary Penal Code which permits the imposition of the death sentence for conduct which does not involve intentional killing, as required by international law which restricts imposition of the death penalty to the most serious crimes.

While we do not wish to prejudge the accuracy of the allegations reported above, we would like to respectfully draw the attention of the authorities in Gaza to several principles applicable to this case under international law.

We would like to remind the authorities in Gaza that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude the crime of treason.

With regard to the allegation that Mohammed Ibrahim Isma'il (al-Sabe') was partly convicted on the basis of evidence obtained through torture we wish to bring to the

attention of the authorities in Gaza Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” This provision reflects a principle of customary international law and was reiterated in paragraph 6c of Human Rights Council resolution 8/8 of 2008. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in article 5 of the Universal Declaration of Human Rights. Only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right.

With regard to use of military courts we would like to bring to the attention of the authorities in Gaza the recommendations made by the former Commission on Human Rights which has stated “States that have military courts or special criminal tribunals for trying criminal offenders to ensure that such courts are an integral part of the general judicial system and that such courts apply due process procedures that are recognized according to international law as guarantees of a fair trial including the right to appeal a conviction and sentence” (Official records of the General Assembly, Fifty Sixth Session, Supplement 40 (A/56/40) para 76). The observations of the Human Rights Committee also provide guidance as they have noted that “the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14 of the International Covenant on Civil and Political Rights.”

With regard to the alleged status as civilians of Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih, we would recall that various international bodies, including the Human Rights Committee, have stated that military tribunals should not have jurisdiction to try civilians. (For an analysis by the Special Rapporteur on the Independence of Judges and Lawyers see A/6/383 para 24) The Committee has recently concluded that “the jurisdiction of military courts over civilians is not consistent with the fair, impartial and independent administration of justice”. See Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40 (A/56/40), chap. IV, para. 76 (12).

We therefore urge the authorities in Gaza to take all necessary steps to ensure that criminal proceedings in Military courts fully comply with international law standards. Considering the irreversible nature of the death penalty, this can only mean that the authorities in Gaza should not carry out capital punishment until all concerns we have raised are dispelled in their entirety.

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

1. Are the facts alleged in the above summary of the case accurate?
2. What is the alleged conduct that Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih were found guilty of which underlies the charges of “collaborating with the enemy”?
3. Please explain the legal basis, composition, appointment procedures and guarantees of independence and impartiality governing Permanent Military Courts in Gaza.

4. Please provide information as to why Permanent Military Courts in Gaza try civilians and please indicate the type of offences in which the military courts have jurisdiction to try civilians.
5. Please indicate what measures are put in place to ensure that due process procedures are respected in military courts in accordance with international law guarantees for fair trial including the right to be represented by counsel and the right to appeal a conviction and sentence.
6. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made, is implemented in the Gaza.
7. Please provide information of the charges on which the following people were found guilty Tae'r Mahmoud Hosni Rimelaat, Emad Mahmoud Sa'd Sa'd, Wael Sa'eed Sa'd Sa'd, Mohammad Sa'd Mahmoud Sa'd, Ayman Ahmad Awad Daghmah, Ahsraf Shafeeq Husein Em raziq, Mahran Abu Jodah, Anwar Bargheet, Saleem Mohammad El Nabheen, Abed Kareem Mohammad Shrier, and Izz El Din Rasem Abewhethe and whether their trials of complied with fair trial safeguards as guaranteed under international law.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration. Finally, we would like to inform your Excellency's Government that we have addressed a communication of the same contents to Dr Mohammad Faraj El Ghoul, Gaza, Palestine.

Pakistan

Imposition of the death penalty on Mr. Singh

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the Government of Pakistan and welcomes the information that the execution of Mr. Singh has been stayed. He notes that the allegation of mistaken identity has been denied. However, he would appreciate receiving detailed information on the fate and whereabouts of Mr. Singh, and on the judicial proceedings against him as requested in the communication sent to the Government.

Urgent appeal dated 23 December 2010, sent with the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention and sentence to death of Mr. **Sarabjit Singh**.

According to the information received

On 30 August 1990, Mr. Sarabjit Singh, a national of India, usually residing in the Bhikiwind District, Tarn Taran Punjab, India, was arrested on the border between India and Pakistan by the Pakistani security forces on charges of espionage for the Government of India and involvement in the bomb blasts in Faisalabad and Lahore. Mr. Sarabjit Singh was presented with no warrant for his arrest. Mr. Sarabjit Singh's fate and whereabouts were unknown until after 9 months following his arrest when the Indian Government and later Mr. Sarabjit Singh's family were notified that Mr. Sarabjit Singh was in the custody of Pakistan.

It is reported that this is a case of mistaken identity. Mr. Sarabjit Singh was arrested in Pakistan as Manjit (Manjeet) Singh, allegedly accused of involvement in terrorist attacks and espionage. According to the source, Mr. Sarabjit Singh was forced to sign a confession statement prepared by the officers interrogating him.

Furthermore, it is reported that from 1991 until 2003 Mr. Sarabjit Singh was held in solitary confinement in a small cell without sufficient space for him to stand upright and denied exposure to natural sunlight. According to the source, Mr. Sarabjit Singh was subjected to ill-treatment and beaten up upon his arrest. The source further alleges that from 1991, Mr. Sarabjit Singh was shackled to the wall of his prison cell until the intervention of a human rights organization from Canada in 2003.

It is further reported that on 3 October 1991, Mr. Sarabjit Singh was charged by a Special Judge in Lahore under sections 302 and 307 of the Pakistani Penal Code and section 3 of the Explosive Substances Act and was sentenced to death. According to the information received, the trial was conducted in English, which Mr. Sarabjit Singh does not speak nor understand. Subsequently, Mr. Sarabjit Singh appealed to Lahore High Court. During the proceedings in High Court, Mr. Sarabjit Singh denied having given a confessional statement voluntarily. In its judgment dated 10 December 2001, Lahore High Court dismissed the appeal and confirmed the judgment issued by the Special Judge in Lahore on 3 October 1991. Similarly, Mr. Sarabjit Singh's appeal to the Supreme Court was denied by order dated 18 August 2005. The Review Petition was also dismissed in default on 24 June 2009 on the grounds of non-appearance of Mr. Sarabjit Singh's previous lawyer. Subsequent application for reconsideration was returned by the registrar of the Supreme Court on the basis that it was inadmissible.

It is further reported that Mr. Sarabjit Singh's current lawyer had deposited criminal petitions No. 529-531 of 2003 and No. 229-531 of 2005 requesting the President of Pakistan to release Mr. Sarabjit Singh. In 2008, the President confirmed Mr. Sarabjit Singh's death sentence and rejected the mercy petition. According to the information received, Mr. Sarabjit Singh's execution was set for 30 April 2008, but was indefinitely deferred following intervention by the Prime Minister of Pakistan.

Reportedly, the petitions filed by Mr. Sarabjit Singh's lawyer contain evidence that Mr. Sarabjit Singh was not involved in the bomb blasts and acts of espionage, on the basis of which he had been convicted and sentenced to death. Mr. Sarabjit Singh's name does not appear on the First Information Report (FIR), a written document usually prepared by the police in India and Pakistan. The name mentioned in FIR is that of Mr. Manjit Singh. According to the information received, Mr. Manjit Singh was arrested by the Indian Police on 16 December 2010.

Mr. Sarabjit Singh is currently detained in Central Jail Kot Lakhpat, Lahore, Pakistan. According to the information received, Mr. Sarabjit Singh suffers from various infections and diseases, namely infection on his feet, high blood pressure and poor circulation, curvature of spine and ulcers on his body. Mr. Sarabjit Singh has allegedly been denied access to medication and medical treatment.

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

With regard to the allegations according to which Mr. Sarabjit Singh's whereabouts remained unknown until after 9 months after his arrest on 30 August 1990, we would also like to draw the attention of your Excellency's Government to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that "Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person."

Furthermore, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this connection and with respect to the allegations according to which Mr. Sarabjit Singh was beaten and subjected to ill-treatment upon his arrest, we would like to draw your Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

Furthermore, with regard to the allegations according to which Mr. Sarabjit Singh has been denied access to medication and medical treatment, we would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

With regard to the allegation according to which Mr. Sarabjit Singh was held in solitary confinement from 1991 until 2003, we would further like to draw your Excellency's Government's attention to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights. (Adopted at the 44th session of the Human Rights Committee, 1992). In this regard, I (we) would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged". (Adopted by the General Assembly by resolution 45/111 of 14 December 1990).

Furthermore, with regard to the allegations indicating that Mr. Sarabjit Singh was held in a small cell without sufficient space for him to stand upright and denied exposure to natural sunlight, we would also like to draw your Excellency's Government's attention to the Standard Minimum Rules for the Treatment of Prisoners. (Adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). I (We) would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. (Adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

With regard to the allegation that Mr. Singh was forced to sign a confession during his interrogation by officers, we should like to draw the attention of your Excellency's Government to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular, principle 16, according to which prosecutors "when (...) com[ing] into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Without prejudging the accuracy of these allegations, we would like to bring to the attention of your Excellency's Government that, especially in capital punishment cases, there is an obligation to scrupulously respect the rights of the accused including the right to provide criminal defendants with "a fair and public hearing before an independent and impartial tribunal" (Article 14 of the International Covenant on Civil and Political Rights, ICCPR). In this respect, with regard to the fact that the death sentence was issued by a special court, we would like to bring to the attention of Your Excellency's Government the recommendations made by the former Commission on Human Rights which has called upon "States that have military courts or special criminal tribunals for trying criminal offenders to ensure that such courts are an integral part of the general judicial system and that such courts apply due process procedures that are recognized according to international law as guarantees of a fair trial including the right to appeal a conviction and sentence" (Resolution 2004/32, para. 7). The observations of the Human Rights Committee also provide guidance as it has observed in its General Comment n° 32 that "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned" (CCPR/C/GC/32, para. 22).

The Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 in particular principle 6, further stipulate that "[t]he principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected". Relevant to the case at hand is the requirement of fully protecting individual rights and freedoms and respect for the various procedural rights which includes the right of the accused to legal representation (article 14(3)d ICCPR) and of the right of the accused to have the free assistance of an interpreter if he cannot understand or speak the language used in court (article 14(3)f ICCPR);"

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

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

Has a complaint been lodged by or on behalf of the alleged victim?

Please provide information on the fate and whereabouts of Mr. Sarabjit Singh. If his fate and whereabouts are unknown, please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

Please provide information concerning the legal grounds for the arrests, interrogation and subsequent incommunicado and secret detention of Mr. Sarabjit Singh and how these measures are compatible with international norms and standards as stated, inter alia, in the Declaration on human rights Defenders.

Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

Government response dated 30 December 2010

I have transmitted your letter to Islamabad for serious consideration and early response. The mission will revert to you, as soon as a response is received.

Government response dated 8 April 2010

The matter was referred to the authorities concerned for clarification. Investigations have revealed that the case of Mr. Sarabjit Singh is not a case of mistaken identity as allegedly portrayed in the communication. The concerned authorities have provided the following particulars of Mr. Sarabjit Singh:

Name: Mr. Manjeet Singh

Alias: Sarabjit Singh

Son of: Saiakhan Singh

The authorities have also conveyed that Mr. Sarabjit Singh, after following the due judicial process, was sentenced to death on charges of causing the death of 18 and injuries to 118 persons through bomb explosions at four different places in Pakistan. The judicial process, involving the Local Court, the Provincial Court as well as the Apex Court, the Supreme Court of Pakistan, provided him an ample opportunity to prove his innocence. Since April 2008, the implementation of the death sentence to Mr. Sarabjit Singh has been stayed by the President of Pakistan for an indefinite period.

We are the view that the reference made in the communication to an individual named Manjit Singh, arrested by the Indian Police on 16 December 2010, has no connection with the case of Mr. Sarabjit Singh.

Imposition of the death penalty on blasphemy charges- Ms Bibi

Violation alleged: Non-respect of international standards on safeguards and restrictions relation to the imposition of capital punishment

Subject(s) of appeal: 1 female

Character of reply: Acknowledgement

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response from the Government of Pakistan.

Urgent appeal dated 22 November 2010 sent with the Chair-Rapporteur of the Working Group on Arbitrary Detention; and Special Rapporteur on freedom of religion or belief.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Ms. **Asia Bibi**, a member of the Christian minority from the village of Ittanwali in Sheikhpura district, Punjab Province.

According to the information received

On 7 November 2010, Ms. Asia Bibi, was sentenced to death on blasphemy charges under section 295-C of the Pakistani Penal Code by Judge Naveed Iqbal of the Sheikhpura district and sessions court. 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".

Reportedly, in June 2009, a group of Muslim women from the village of Ittanwali in Sheikhpura district had claimed that the water Ms. Bibi served was "unclean" because of her Christian faith. When Ms. Bibi maintained that her religion was as good as any and refused to convert to Islam, a mob led by a local Muslim religious leader tried to attack her and the police took Ms. Bibi into so-called "protective custody" in Nankana. Subsequently, she has spent more than a year as an under-trial prisoner on blasphemy charges at Sheikhpura District Jail.

The Pakistani National Commission on the Status of Women (NCSW) has investigated Ms. Bibi's cases and found gross irregularities in the judicial process, highlighting the need for reform in the legal injunctions. According to the NCSW, the false allegation against Ms. Bibi was rooted in a personal vendetta by a local landlord. The NCSW called to repeal sections 295-B and 295-C of the Pakistani Penal Code.

On 20 November 2010, Ms. Bibi reportedly submitted a petition for pardon under article 45 of the Pakistani Constitution to the President of Pakistan. In her petition, Ms. Bibi emphasized that she had "never uttered any derogatory remark against the Holy Prophet (peace be upon him)". It is also reported that a sub-inspector initially investigated the case against Ms. Bibi, contrary to section 156-A of the Criminal Procedure Code which requires that blasphemy cases have to be investigated by an officer not less than the rank of Superintendent of Police.

Without in any way implying any determination on the facts of the case and without expressing at this stage an opinion on the facts of the case and on whether the detention of

the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee her right not to be deprived arbitrarily of her liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

We would like to bring to the attention of your Excellency's Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. In this respect, we would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, which Pakistan signed in 2008 and ratified on 23 June 2010, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. The mandate of the Special Rapporteur on summary executions has observed in a report to the Human Rights Council, that "the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life" (A/HRC/4/20, para. 53). This would exclude charges related to blasphemy from those for which the death penalty can be imposed under international law.

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief of Ms. Bibi in accordance with article 18 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. In this context, we would also like to refer to Human Rights Council resolution 6/37, in which the Council urges States "to take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities". The General Assembly, in its resolution 64/164, urges States "to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practice freely one's religion, including the right to change one's religion or belief, is violated". In the same resolution, the General Assembly urges States "to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief [...] and to bring to justice all perpetrators of violations of these rights".

We would also like to refer to pertinent observations made by previous Special Procedures mandate-holders who continuously stressed the risk that efforts to combat blasphemy may be manipulated for purposes contrary to human rights and that any blasphemy legislation should not be used to censure all inter-religious and intra-religious criticism (see E/CN.4/2000/65, para. 111; A/62/280, paras. 75-77; A/HRC/13/40/Add.1, paras. 202-203). In his country visit report on Pakistan, the then Special Rapporteur on freedom of religion or belief, Mr. Abdelfattah Amor, stated that "applying the death penalty for blasphemy appears disproportionate and even unacceptable" (see E/CN.4/1996/95/Add.1, para. 82).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the abovementioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of

any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged with regard to the judgment of Sheikhpura district and sessions court of 7 November 2010, sentencing Ms. Bibi to death on blasphemy charges?
3. Please provide detailed information on how the detention and death sentence of Ms. Bibi and the application of section 295-C of the Pakistani Penal Code is compatible with the international norms and standards on the rights to life, freedom of religion or belief and freedom of opinion and expression.

Government reply dated 23 November 2010

I have transmitted your letter to Islamabad for serious consideration and early response. The mission will revert to you, as soon as a response is received.

Increased killings of political activists in Balochistan

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: Group concern (21 identifiable individuals)

Character of reply: Acknowledgement

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response from the Government of Pakistan.

Urgent appeal dated 1 October 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding **allegations of increased killings of political activists in Baluchistan**. The killings are allegedly being perpetrated by Pakistan's secret service agencies, including the military intelligence and inter-services intelligence.

I have previously brought this issue to the attention of your Excellency's Government in a communication dated 13 August 2010, where concern was raised on the death of 5 people which occurred during the period of April to July 2010. The following victims were the subject of the communication: Mr. Maula Bakhsh Dashti, a central committee member of the Baloch National Party and former Chair of Baloch Students Organization (BSO) in Awami; Mr. Habib Jalib a former senator and he was a senior lawyer of the Pakistan Supreme Court, former Chair of BSO in Menga, and the Secretary General of Balochistan National Party; Mr. Ghulam Mohammad Baloch, President of the Baloch National

Movement; Mr. Sher Muhammad, Baloch Joint Secretary of the Baloch Republican Party, and Mr. Lala Muneer, former President of the Baloch National Party. I look forward to receiving a response from your Excellency's Government on the concerns I had raised.

According to information now received

There has been an increase in killings of Baluch political leaders in the past two months. I have received information on the following events:

- On or about 8 September 2010, Mr. **Abdul Khaliq Baloch**, was killed in a blast attack in Hub. He was a senior leader of BNP-Mengal.
- Mr. **Zaman Khan Marri**, a lawyer of the Baluchistan High Court, disappeared on 18 August 2010, and his body was recovered on 5 September 2010, in Mastung with a bullet wound to the head.
- On 31 August 2010, Kalat district BNP leader Mr. **Nawabuddin Nechari** and Mr. **Saffar Khan** were shot dead by unknown gunmen in Kalat.
- On 18 August 2010, Mr. **Sardar Nadir Jan Gichki**, the maternal uncle of Sardar Akhtar Mengal, President of the Baluchistan National Party, was gunned down in Mekran. Although he was not politically active, his killing was believed to be politically motivated.
- On 10 August 2010, a former district President of the Baluchistan National Party (BNP-Mengal), Mr. **Attaullah Baluch**, was shot dead in Khuzdar. He was a senior leader of BNP-Mengal.
- On 9 August 2010, Mr. **Rawal Khan Mohammad Hasni**, an elder of Mohammad Hasni tribe, was shot dead by unknown armed men near his house at Brewery road area in Quetta. It is not known if the killing was politically motivated.
- On 20 July 2010, Mr. **Haji Liaquat Ali Mengal**, a leader of the Baluchistan National Party-Mengal, was shot dead near his house in Kalat.
- On 14 August 2010, the bodies of Mr. **Zohaib Rodini** and Mr. **Khan Mohammad Baloch** were found in Ferozabad area near Khuzdar. It is alleged that they were abducted in Khuzdar by the Pakistani para-military forces.
- On 15 August 2010, the body of Mr. **Shajahan Langov**, a resident of Qilli Ismael, was recovered from Sabzal Road in Quetta. He was allegedly abducted by Pakistan secret services from his house about a month before.
- On 16 September 2010, the body of a Baloch lawyer, Mr **Ali Sher Kurd** was found in a desolate place in Khuzdar district, some 300-kilometer in southeast of Quetta. He had been kidnapped three days prior to his death allegedly by the Pakistani Frontier Corps and intelligence services. It is indicated that the victim received a single bullet to his forehead which passed through his skull. His body had marks of wounds indicating that he had been tortured.
- Other victims include Mr. Ashfaq Mullahzai, 25, and Mr. Farooq Mengal, 30, Mr. Majeed Langov, 19, Mr. Ashfaq Ahmed, 23, Mr. Farooq Mengal, 24, Mr. Nazeer Ahmed, 25, Mr. Faiz Mohammad Bangulzai, 26, Mr. Bahar Khan Bangulzai, 32, and Mr. Azizullah Baloch.

While I do not wish to prejudge the accuracy of these allegations, I would like to seek clarification of the circumstances regarding the deaths from your Excellency's Government. I am concerned with the allegations that these killings reveal a systematic pattern of extrajudicial executions of political activists in Baluchistan.

I would like to reiterate the international obligations undertaken by your Excellency's Government's, in particular, I would refer to the International Covenant on Civil and Political Rights ("ICCPR"), to which Pakistan is a party, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.

Your Excellency's Government has an obligation to take positive measures to protect the right to life and in this regard the Human Rights Committee has pointed out in the case of *Luis Asdrúbal Jiménez Vaca v. Colombia*, CCPR/C/74/D/859/1999) that "article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction. In the case in question, the State party has not denied the author's claims that the threats and harassment which led to an attempt on his life were carried out by agents of the State, nor has it investigated who was responsible. In the light of the circumstances of the case, the Committee considers that there has been a violation of article 6, paragraph 1, of the Covenant."

I urge your Excellency's Government to adopt measures to provide protection to political activists in Baluchistan. In this regard the Human Rights Committee has noted in the case of *William Eduardo Delgado Páez v. Colombia*, (Communication No. 195/1985) that "Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty. At the same time, States parties have undertaken to guarantee the rights enshrined in the Covenant. It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just because that he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant". This was reiterated in the case of *Luis Asdrúbal Jiménez Vaca v. Colombia*, (CCPR/C/74/D/859/1999). Further the principles on effective prevention and investigations of arbitrary, extra-legal and summary executions in particular principle 4 provides that "Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

I urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in particular Principle 9 that 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. This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial

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

I urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the family of the victims. I also request that your Excellency’s Government adopt immediate and effective measures to prevent the recurrence of these acts and to provide protection to those under threat. I will continue to monitor developments related to this case and I would like to request your Excellency’s Government to send me any relevant documentation with regard to measures taken to address the situation.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Have any investigations been undertaken to establish whether the killings of the victims mention in the summary of facts are linked to the security forces. If yes please provide details of any the investigation and please provide the full details of any disciplinary action and prosecution undertaken with regard to officers found responsible.
3. Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of the victims mentioned in the summary of facts.
4. Please indicate what measures are in place to ensure protection of the right to life of political activists under threat in compliance with international human rights standards.
5. Please indicate what measures are being undertaken to address the escalation in the level of violence targeting political activists in Baluchistan.

Government reply dated 4 October 2010

I have transmitted your letter to Islamabad for serious consideration and early response. However, we would like to reiterate that assessing/considering these cases as extra-judicial killings before receiving a detailed response including investigations results from the concerned government is not acceptable.

Meanwhile we have asked the relevant authorities to ensure through, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

The mission will revert to you, as soon as a response is received.

Killing of political activists in Balochistan

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: 5 males

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur thanks the Government for the response provided in respect of the killings of Mr. Maula Bakhsh Dashti and Mr. Habib Jalib. However, he would appreciate receiving information on any investigations and judicial proceedings initiated against the identified perpetrators of the crimes. Furthermore, the Special Rapporteur calls upon the Government to provide detailed information on the killings of Mr. Ghulam Mohammad Baloch, Mr. Lala Muneer and Mr. Sher Muhammad, as requested in the communication sent.

Allegation letter dated 13 August 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to bring to your Excellency's Government's attention to information I have received concerning the killings of **Mr. Maula Bakhsh Dashti, Mr. Habib Jalib, Mr. Ghulam Mohammad Baloch, Mr. Lala Muneer and Mr. Sher Muhammad.**

According to information received

On 11 July 2010, Mr. Maula Bakhsh Dashti was killed by unknown gunmen in Kech Makuran. He was a central committee member of the Baloch National Party, a former chairperson of Baloch Students Organization (BSO) in Awami.

On 14 July 2010, Mr. Habib Jalib was killed by gunmen who are alleged to be members of the Pakistani Military Intelligence Agency. Mr. Habib Jalib, was a former senator and was a senior lawyer of Pakistan supreme court and a former chairperson of BSO in Mengal. He was also the Secretary General of Balochistan National Party.

I also am informed that between 24 to 29 April 2009, three Balochistan Nationalist leaders namely Mr. Ghulam Mohammad Baloch, president of the Baloch National Movement, Mr. Sher Muhammad, Baloch joint secretary of the Baloch Republican Party and Mr. Lala Muneer, former president of the Baloch National Party, were abducted at the Kachkol Ali advocate chamber allegedly by security forces. Their bodies were found in the district of Kech Sadar. It is alleged that a post mortem was not conducted but the medical reports indicate that the cause of death were gunshots.

While I do not wish to prejudge the accuracy of these allegations, I would like to seek clarification of the circumstances regarding the deaths of Mr. Maula Bakhsh Dashti, Mr. Habib Jalib, Mr. Ghulam Mohammad Baloch, Mr. Lala Muneer and Mr. Sher Muhammad from your Excellency's Government. I am concerned with the allegations that these killing reveal a systematic pattern of extrajudicial executions of political activists in Balochistan.

I would like to draw your Excellency's Government's attention to the fundamental principles applicable under international law to these cases. In particular, I would refer to the International Covenant on Civil and Political Rights ("ICCPR"), to which Pakistan is a party, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6).

With regard to the allegation that Mr. Dashti was killed by unknown gunmen, I would like to bring to the attention of your Excellency's Government that States have the responsibility to protect persons from human rights violations committed by non-state actors. In this regard the Human Rights Committee has pointed out that the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against

acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There are circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights. This applies when a State Party permits or fails to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. (para 8) General Comment No. 31 the Nature of the General Legal Obligation Imposed on States Parties to the Covenant. Further my mandate has submitted in a report to the Human Rights Council that crimes, including murder, carried out by individuals can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes. Once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. Through its inaction the Government confers a degree of impunity upon the killers (E/CN.4/2005/7, Para 71/ 72)

With regard to the allegation that Mr. Habib Jalib Mr. Ghulam Mohammad Baloch, Mr. Lala Muneer and Mr. Sher Muhammad were killed by security forces, I wish to bring to your Excellency's Government attention that in order to fulfill the legal obligation to investigate, prosecute, and punish all violations of the right to life, your Excellency's Government must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Principle 7).

I urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in particular Principle 9 that 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. This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions".

I urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of Mr. Maula Bakhsh Dashti, Mr. Habib Jalib, Mr. Ghulam Mohammad Baloch, Mr. Lala Muneer and Mr. Sher Muhammad with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the family of the victims. I

also request that your Excellency's Government adopt immediate and effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Have any investigations been undertaken to establish whether the killing of Mr. Habib Jalib Mr. Ghulam Mohammad Baloch, Mr. Lala Muneer and Mr. Sher Muhammad are linked to the security forces. If yes please provide details of any the investigation and please provide the full details of any disciplinary action and prosecution undertaken with regard to officers found responsible.
3. Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of Mr. Maula Bakhsh Dashti, Mr. Habib Jalib, Mr. Ghulam Mohammad Baloch, Mr. Lala Muneer and Mr. Sher Muhammad.
4. Please indicate whether compensation has been provided to the family of the victims.

Government reply dated 18 November 2010

Further to this Mission's letter of even number dated 20th September 2010, regarding information about the alleged killings of Mr. Maula Bakhsh Dashti and Mr. Habib Jalib, I am enclosing an update on these two killings, received from the relevant authorities in Pakistan.

Alleged killings of Mr. Moula Baksh Dashti and Mr. Habib Jalib

The alleged killings of Mr. Moula Bakhsh Dashti and Mr. Habib Jalib were referred to the concerned law enforcement and administrative authorities in Pakistan. The above cases have been thoroughly examined and the following conclusions were arrived at:

Mr. Moula Bakhsh Dashti

Circumstantial evidence has revealed that the murder of Maula Bakhsh rival, former District President National Party was carried by a rival political group named "BLF".

Mr. Habib Jalib Baloch

Investigations have revealed that "family differences" led to the killing of Habib Jalib, General Secretary, BNP-M. The investigations further revealed that the murder was committed by his own domestic workers.

Killing of members belonging to a Christian minority community

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur welcomes the measures adopted by the Government of Pakistan to investigate the killings. He urges the Government to continue the investigations and ensure that the perpetrators of the killings are made to account and that compensation should be paid to the families of the victims. The Special Rapporteur looks forward to receiving further information on judicial investigation, or any criminal charges and other inquiries carried out in relation to this case.

Urgent appeal dated 27 July 2010, sent with the Special Rapporteur on freedom of religion or belief; and Independent Expert on minority issues.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding members of the Christian minority community in Pakistan, including **Mr. Rashid Emmanuel** and **Mr. Sajid Emmanuel**, killed on 19 July 2010, in Faisalabad, Punjab province.

According to the information received

Pastor Rashid Emmanuel, 32 years, and his brother Sajid Emmanuel, 30 years, were arrested in Faisalabad on 2 July 2010 on charges of having written a pamphlet with derogatory remarks in respect of the Prophet Mohammad, which pursuant to section 295-C of Pakistan's Penal Code is punishable with death or imprisonment for life. A representative of the Christian community contacted the police and was told by station head officer Aamir that a Sub-inspector and an Assistant Superintendent had been chosen to undertake the investigation. However, this procedure reportedly does not comply with section 156-A of the Criminal Procedure Code which provides that a blasphemy case has to be investigated by an officer not less than the rank of Superintendent of Police.

On 7 July 2010, during a procession in Warispura, local Muslim residents chanted threatening slogans against Christians, calling for the hanging of Rashid Emmanuel and Sajid Emmanuel. In addition, a mob attacked a Catholic Church, breaking its windows and doors.

On 10 July 2010, persons in another procession burned tires on the streets and there were calls to declare that Christians would not be allowed to live in Warispura. During a procession at 1:00 a.m., motorbike riders allegedly harassed Christians who were leaving their homes with their belongings.

At a public meeting at noon on 11 July 2010, Muslim leaders from various political parties allegedly reiterated death threats against the brothers. Among the speakers were reportedly Mr. Sahibzada Abulkhair Mahumed Zubair (Jamiat Ulema-ePakistan) and Mr. Syed Hidayat Hussain Shah (Khatme-e-Nabowat). At the meeting it was announced that a set of gallows had been set up at the tower of Ghanta Ghar in the centre of Faisalabad, in preparation for the hanging of blasphemous Christians.

While Rashid Emmanuel and Sajid Emmanuel remained in detention at the police station, fears were voiced that they could be attacked at any time, either by a mob or by co-detainees. On 19 July 2010, Rashid Emmanuel and Sajid Emmanuel were taken to their hearing at the sessions court in Faisalabad city. When leaving the court under police custody around 1:30 p.m., they were killed by two unidentified gunmen who managed to escape despite the presence of a number of police officers.

Immediately following the killing of Rashid Emmanuel and Sajid Emmanuel, the local administration deployed a heavy contingent of police to control the situation in the town. However, violent clashes between the local Christian and Muslim communities broke out, injuring at least ten Christians and Muslims. At around 10:00 p.m. on 19 July 2010, announcements were made from mosques in Waris Pura asking people to fight against

Christians. A church was pelted by Muslim protestors with stones and the protestors damaged some shops. Police used tear gas to disperse the crowd and reportedly around 60 Muslims were arrested in connections with the clashes.

The Federal Minister for Minority Affairs of Pakistan, Mr. Shahbaz Bhatti, reportedly said he suspected that Rashid Emmanuel and Sajid Emmanuel were falsely accused of blasphemy by people with a grudge against them.

Concerns have been expressed at the safety and security of members of the Christian minority community in Pakistan.

While we do not wish to prejudge the accuracy of the reports received, we would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. In particular, we would refer to the International Covenant on Civil and Political Rights ("ICCPR"), to which Pakistan is a party, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

We would also like to draw the attention of your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 4 provides that "effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". Further Principle 9 states that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions..." This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

We wish to bring to the attention of your Excellency's Government the responsibility that States have to protect persons from human rights violations committed by non-state actors. In this regard the Human Rights Committee has pointed out that the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There are circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights. This applies when a State Party permits or fails to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. (*para 8) General Comment No. 31 [80] the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*. Furthermore, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights that: "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71).

We would like to appeal to your Excellency's Government to ensure the rights of the Christian minority in Pakistan to freedom of religion or belief in accordance with article 18 of the Universal Declaration of Human Rights and of the ICCPR. In addition, we would like to remind your Excellency's Government that, according to article 20 of the ICCPR,

“any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

Furthermore, we draw the attention of your Excellency’s Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 requires that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”. Article 2 states that “Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. In addition, Article 4.1. of the Declaration states that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

We also would like to refer to Human Rights Council resolution 6/37, in which the Council urges States “to take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence”. The General Assembly, in its resolution 64/164, urges States “to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief [...] and to bring to justice all perpetrators of violations of these rights”.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged with regard to the incidents mentioned above?

Please provide the details and where available, the results, of any judicial investigation, or any criminal charges and other inquiries carried out in relation to this case.

Government reply dated 11 August 2010

The case was registered on 1st July 2010, in accordance with the laws of the land on the complaint of Khurram Shahzad s/o Taj Din against Rashid Emmanuel and Sajid Emanuel on the charge of circulation of blasphemous pamphlets containing derogatory remarks in respects of the holy prophet (PBUH). Investigations on the case was entrusted to the competent authorities as required by section 156-A Cr.P.C

The accused were arrested on 5th July 2010 and their physical remand was obtained up to 19 July 2010. During the Course of investigations the alleged accused were interrogated and their handwriting samples obtained before the judicial magistrate and the same were sent to the Office of the Handwriting expert, Lahore for comparison.

In order to extend judicial remand, the concerned authorities produced the accused in the court of Senior Civil Judge, Faisalabad on 19 July 2010, in police custody. After attending proceedings of the court, while the accused were escorted towards an official vehicle, unknown accused opened indiscriminate fire killing the accused along with a police official.

Following the incident, a case was registered at Police Station Kotwali against unknown accused on the complaint of Emanuel Nadeem vide First Information Report (FIR) No. 658 dated 19 July 2010.

The investigation of the case was handed over to In-charge Investigation Staff, Police Station Kotwali, who examined on the spot on the same day and collected blood stained soil and 4 empty cartridges of pistol 30 bore. All these were sent to forensic science laboratory for analysis. Since the case falls within the jurisdiction of Anti-terrorism Court, competent authorities were requested to constitute a joint investigation team.

Meanwhile on 3rd August 2010, a suspect Mr. Maqsood Ahmad s/o Hassan Din, resident of Chak No. 204/RB was arrested and remanded to judicial lock-up for identification parade. Special Judicial Magistrate has been deputed to conduct and supervise the identification parade at the earliest.

Relevant authorities are in process of investigation, which will be finalised in the light of identification report by the Special Judicial Magistrate.

Killing of members belonging to a religious minority

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: 3 males (religious minorities)

Character of reply: Acknowledgement of receipt

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a response. He further appreciates the information provided by the Government that investigations are under way and that the concerned administrative and law enforcement authorities have been instructed to redouble their efforts in this regard.

Allegation letted dated 19 April 2010, sent with Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the recent killing of Mr. **Ashraf Pervez**, Mr. **Masood Javed** and Mr. **Asif Masood**, all of them members of the Ahmadiyyah community in Faisalabad, province of Punjab.

According to the information received

Three Ahmadi traders, Mr. Ashraf Pervez, aged 60, Mr. Masood Javed, aged 57, and Mr. Asif Masood, aged 24, were returning home around 10:00 p.m. on 1 April 2010 after the closure of their businesses in Rail Bazaar, Faisalabad. When their car reached Faisal Hospital, Canal Road, at least four persons jumped out of a white car and started shooting indiscriminately at the three businessmen. As a result, Mr. Ashraf Pervez, Mr. Masood Javed and Mr. Asif Masood were seriously injured and died on the way to hospital.

Some weeks before their death, Mr. Ashraf Pervez, Mr. Masood Javed and Mr. Asif Masood had reportedly complained to police at People's Colony that they were being threatened by unidentified people because of their religious activities. However, the police officers had only recommended them to limit their movements and hire bodyguards to protect their safety.

In the province of Punjab, it is reported that anti-Ahmadiyya rhetoric in open-air conferences is permitted to clerics in the Punjab, where some mullahs exhort their audience to commit violence against Ahmadis by declaring them *Wajib ul Qatl* (liable to be killed). At the same time, several Ahmadis have been arrested under discriminatory domestic blasphemy laws; for example, section 298-C of the Penal Code provides that any Ahmadi who poses as a Muslim, refers to his faith as Islam, or preaches or propagates his faith shall be punished with imprisonment up to three years and shall also be liable to be fined.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief of the members of the Ahmadiyyah community in accordance with article 18 of the Universal Declaration of Human Rights.

We also would like to refer to Human Rights Council resolution 6/37, in which the Council urges States "to take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities". The General Assembly, in its resolution 64/164, urges States "to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practise freely one's religion, including the right to change one's religion or belief, is violated". In the same resolution, the General Assembly urges States "to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief [...] and to bring to justice all perpetrators of violations of these rights".

We would also like to draw the attention of your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 4 provides that "effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". Further Principle 9 states that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions..." This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

We wish to bring to the attention of your Excellency's Government the responsibility that States have to protect persons from human rights violations committed by non-state actors. In this regard the Human Rights Committee has pointed out that the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There are circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights. This applies when a State Party permits or fails to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. (*para 8*) *General Comment No. 31 [80] the Nature of the General Legal*

Obligation Imposed on States Parties to the Covenant. Further the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, “crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators.” (E/CN.4/2005/7, para. 71).

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the Ahmadiyyah community are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person guilty of the alleged killings of Mr. Ashraf Pervez, Mr. Masood Javed and Mr. Asif Masood should be ensured.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged with regard to the alleged killings of Mr. Ashraf Pervez, Mr. Masood Javed and Mr. Asif Masood?
3. Please provide the details and where available, the results, of any judicial investigation, or any criminal charges and other inquiries carried out in relation to this case.

Government reply dated 11 June 2010

The above matter was referred to the authorities concerned for necessary investigation and response. As per the information received, local authorities, based on the complaint filed by the family member of deceased, have registered the case against the unidentified assassins. Investigations are underway to find their whereabouts. At the same time, the concerned administrative and law enforcement authorities have been instructed to redouble their efforts in this regard.

Death in Custody

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 8 April 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 8/3 and 8/8.

In this connection, we would like to bring to your Excellency’s Government’s attention information we have received concerning the following situation.

According to the information received

On 26 February, the police raided the house of Mr. **Muddasar Iqbal**, in relation to a case of theft. Because he was not at home, his elder brother was arrested and taken to the police station. When Mr. Iqbal's mother went to the police station to inquire about her son, she was told that he would be released if Mr. Muddasar Iqbal turned himself in. Mr. Iqbal went to the police chowki (kiosk), a sub-police station of Satellite Station. As soon as he arrived, he was beaten in front of his mother, who was ordered to leave the premises.

The following day, when Mr. Iqbal's mother went back to the chowki, she found her son tied to a wooden cart and being beaten on his legs and the soles of his feet. A constable indicated that he would be released if she paid 50,000 Rs., and when she stated that she did not have the money, the officers stabbed Mr. Iqbal's feet with screwdrivers. The next day, Mr. Iqbal's mother gathered approximately half of the money, but he was not released. On 1 March, Mr. Iqbal was presented before a judge, and despite the fact that he could not walk, the judge did not ask about his treatment at the police station and ordered his detention on remand at Sargodha District Prison. In the meantime, Mr. Iqbal's mother was continually harassed by officers from the Satellite Police Station, who threatened to detain her other son if she did not pay the rest of the money.

An assistant Sub-Inspector from Jhal Jhakistan Police Station, believed to be close to the officer who had detained Mr. Iqbal filed an application before the court, indicating that Mr. Iqbal was wanted in another case. As a result, a civil judge ordered that he be transferred back to police custody. During the hearing, Mr. Iqbal was able to inform the judge about the beatings, and the judge ordered that he be sent to the civil hospital in Sargodha for two days. Two days after, the judge ordered that he be admitted to Allied Hospital in Faisalabad. However, Mr. Iqbal was sent back to the civil hospital in Sargodha, where he died on 22 March.

Although the authorities indicated that those responsible had been suspended and that an inquiry was ongoing, it is believed that no suspensions have taken place, and no investigation has begun.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency's Government's attention to the fundamental principles applicable under international law to these cases. Article 5 of the Universal Declaration of Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (see, for instance, the Human Rights Committee's views in the case of *Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2).

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

The Council added that this includes the obligations "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions".

We urge your Excellency's Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of Mr. Muddasar Iqbal, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his family. In this respect we note that Human Rights Council Resolution 8/8, paragraph 6 (b) and (e), urges States to hold responsible not only those who perpetrate torture, but also those "who encourage, order, tolerate or perpetrate acts of torture [...], to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed".

We urge your Excellency's Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

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

Panamá

enfrentamientos entre cuerpos y fuerzas de seguridad del Estado panameño y trabajadores, en su mayor parte miembros de la comunidad indígena Ngäbe-Bugle, siete muertos como consecuencia.

Violación alegada: Uso excesivo de la fuerza (durante manifestaciones)

Persona objeto del llamamiento: siete muertos, entre ellos, tres menores de edad.

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Panamá con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Llamamiento urgente con fecha 6 de septiembre de 2010, enviada junto con el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión; el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes; la Relator Especial sobre la independencia de magistrados y abogados; y la Relator Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido 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.

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.

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.

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.

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.

En el contexto de los acontecimientos ocurridos en Bocas del Toro, el Sr. Valentín Palacio habría permanecido en paradero desconocido entre los días 8 y 12 de agosto. El Sr. Palacio habría reaparecido el día 12 de agosto y presentado en conferencia de prensa por el Director de la Policía Nacional.

Según los informes recibidos, tras los sucesos de Bocas del Toro, se habrían intensificado los actos de intimidación y acoso por parte de la prensa nacional y de miembros de partidos políticos contra ciertos sectores de la sociedad civil panameña, así como contra destacados defensores de los derechos humanos en el país.

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.

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.

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.

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.

Papua New Guinea

Killing of prisoners during a jail break

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 6 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 24 November 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to bring to your Excellency’s Government’s attention information we have received concerning **Mr. Lawrence Morokana Karai**, 30 years of age, and the killing of five detainees at Baisu jail.

According to reports received, on Friday, 5 November 2010, five detainees were killed and seven seriously injured when Correctional Service warders shot at escaping detainees during a jail break from Baisu Jail, Mt. Hagen, Western Highlands Province, Papua New Guinea. Those killed and injured were reportedly part of a group of at least 55 detainees who tried to escape. Sources said 13 detainees had been recaptured while 37 escaped successfully. According to information received the reason for the jail break was due to concerns by detainees with regards to their health following an outbreak of dysentery and suspected cholera in the jail and the deaths of a number of detainees. Four detainees

reportedly died in the past few weeks and others were seriously ill. The health authorities are said to have inspected the jail and declared the facility unsafe for human habitation. Correctional Services were reportedly not taking the situation seriously enough despite the requests from the detainees. On 6 November, 50 detainees from Baisu were reportedly transferred to Barawagi Jail in Chimbu Province and there are plans to transfer the remaining 183 detainees to other jails in the Highlands.

According to the information received, on 22 September 2008, Mr. Lawrence Karai was arrested at Port Moresby betting shop, Cameron road, Gordons, Bougainville at the request of Joel Warrach and Leon who own the shop. The owners had accused Mr. Karai, himself a worker at the betting shop, of stealing 90,000 Kina from the shop. During the arrest, he was reportedly punched in the face and kicked by several police officers who accused him of lying about his whereabouts when the alleged theft occurred. On the way to the Boroko police station, he was blindfolded and beaten with a metal rod and threatened with a gun, in a wooded area near to "Magi High Way." As a result of this treatment, he suffered several injuries to the hand, knees, and legs which made it difficult for him to move his hands and to walk for several weeks. He also suffered several facial abrasions and cuts to his body. Mr. Karai lodged complaints with two lawyers and appeared before the committal court in Waigani. On 10 October 2008, he was interviewed by police led by Mr. Susuve Epe (CID officer). It is alleged that he was punched and hit with a metal object during the interviewing. He was detained until June 2009, and his case was dismissed by the court for lack of evidence in September 2009. Mr. Karai now suffers from acute bodily pains and is disabled in the left hand.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the person named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In terms of international law your Excellency's Government has the obligation under the International Covenant on Civil and Political Rights ("ICCPR") (to which your Excellency's Government acceded on 21 July 2008), to ensure that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). In its General Comment on article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

With regards to the alleged killings during the prison break we are aware that your Excellency's Government had to take measures to bring the security situation under control. However any measures that are adopted have to strictly comply with international obligations that have been undertaken by your Excellency's Government. International human rights law 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. We would note the relevance in this case of the United Nations Basic Principles on the Use of Force and Firearms by Law Officials (Basic Principles) which provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (para. 9). Additionally, principle 4 provides that, "Law enforcement officials, in carrying out their duty shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, principle 5 provides that, "[w]henver the use

of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment [...].” Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened." Furthermore, Principle 16 provides that, "Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention” insofar as such person has perpetrated a particularly serious crime involving a grave threat to life, in accordance with principle 9[...].”

In a report submitted by the then Special Rapporteur on extrajudicial, summary or arbitrary executions mandate to the General Assembly at its sixty-first session, it was noted that 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. 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” (A/61/311, paras 41- 45).

We would also like to draw the attention of your Excellency’s Government to the fact that international law requires that in cases of allegations of violation of the right to life there should be investigations that are effective, comprehensive and independent as well as prompt and transparent. Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which requires States to conduct a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

With regard to the allegations that four prisoners died due to lack of medical attention we would like to bring to the attention of your Excellency’s Government that States have an obligation to prevent deaths of persons under detention by providing *inter alia* medical treatment. The Human Rights Committee observed in the case of *Barbato v. Uruguay* that “While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermitt committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant. Further the mandate on summary executions has submitted to the General Assembly that “When the State detains an individual; it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies in State custody, there is a presumption of State responsibility.” (A/61/311. para 50)

We would also like to draw your Excellency’s Government’s attention to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social

Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw your Excellency's Government's attention to paragraph 7 (b) of Resolution 8/8 of the Human Rights Council, which stated that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the cases accurate?
2. Have a complaint or complaints been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate whether compensation has been provided to Mr. Karai or to the family of the five detainees who were shot dead by the security forces.

Perú

La muerte de cinco personas durante un enfrentamiento con la policía

Violación alegada: Uso excesivo de la fuerza (durante manifestaciones)

Persona objeto del llamamiento: 5 personas muertas y 30 personas heridas

Carácter de la respuesta: sin respuesta

Observaciones del Relator Especial

El Relator Especial lamenta la falta de cooperación del Gobierno de Perú con el mandato otorgado por la Asamblea General y el Consejo de Derechos Humanos.

Carta de alegaciones con fecha 22 de abril de 2010, enviada por parte del Relator Especial.

En este contexto, quisiera señalar a la atención urgente del Gobierno de Su Excelencia sobre la información que he recibido en relación con la muerte de 5 civiles el 4 abril de 2010 en Chala, Perú. La información que he recibido alega que estas personas resultaron muertas en una confrontación con la Policía.

El 1º de abril de 2010, el Gobierno del Perú declaró el estado de emergencia en la región, debido a las previsiones de protestas en relación a un decreto presidencial relativo a la minería, adoptado en febrero de 2010. El 4 abril de 2010, al menos 6000 mineros cerraron una de las principales autopistas de Chala y participaron en una demostración llamando a rechazar el decreto minero de febrero de 2010. De acuerdo con las informaciones recibidas, la policía respondió a los manifestantes, que tiraban piedras y maderos contra ellos, abriendo fuego y usando gas lacrimógeno contra la multitud. Aproximadamente unos 200 policías trataron de dispersar a los manifestantes, y 5 de ellos resultaron muertos y unos 30 heridos.

Sin implicar, de antemano, una conclusión sobre los hechos, quisiera llamar a la atención de su Gobierno sobre los principios pertinentes de Derecho Internacional. El Pacto Internacional de Derechos Civiles y Políticos (PIDCP) prevé que cada individuo tiene derecho a la vida, y que ninguna persona será privada arbitrariamente de este derecho (Artículo 6). En su Observación General sobre el artículo 6, el Comité de Derechos Humanos ha observado que: “los Estados Partes no sólo deben tomar medidas para evitar y castigar los actos criminales que entrañen la privación de la vida, sino también evitar que sus propias fuerzas de seguridad maten de forma arbitraria. La privación de la vida por las autoridades del Estado es una cuestión de suma gravedad. Por consiguiente, la ley debe controlar y limitar estrictamente las circunstancias en que dichas autoridades pueden privar de la vida a una persona”. El artículo 6 del PIDCP exige que el uso de la fuerza por la policía será hecho en la medida de lo estrictamente necesario, y que la fuerza será usada de manera proporcional al objetivo perseguido. Asimismo, el Principio 9 de los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley establece que: “no emplearán armas de fuego contra las personas salvo en defensa propia o de otras personas, en caso de peligro inminente de muerte o lesiones graves... y sólo en caso de que resulten insuficientes medidas menos extremas para lograr dichos objetivos. En cualquier caso, sólo se podrá hacer uso intencional de armas letales cuando sea estrictamente inevitable para proteger una vida”.

Asimismo, el Principio 1 de los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias establece que “No podrán invocarse para justificar esas ejecuciones circunstancias excepcionales, como por ejemplo, el estado de guerra o de riesgo de guerra, la inestabilidad política interna ni ninguna otra emergencia pública [y que] Esas ejecuciones no se llevarán a cabo en ninguna circunstancia...”.

En este contexto de asambleas y demostraciones pacíficas, el Principio 12 de los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley establece que dado que: “todas las personas están autorizadas a participar en reuniones lícitas y pacíficas, de conformidad con los principios consagrados en la Declaración Universal de Derechos Humanos y en el Pacto Internacional de Derechos Civiles y Políticos, los gobiernos y los organismos y funcionarios encargados de hacer cumplir la ley reconocerán que la fuerza y las armas de fuego pueden utilizarse solamente de conformidad con los principios 13 y 14.” Estos últimos establecen, a su vez, que “Al dispersar reuniones ilícitas pero no violentas, los funcionarios encargados de hacer cumplir la ley evitarán el empleo de la fuerza o, si no es posible, lo limitarán al mínimo necesario” y que “Al dispersar reuniones violentas, los funcionarios encargados de hacer cumplir la ley podrán utilizar armas de fuego cuando no se puedan utilizar medios menos peligrosos y únicamente en la mínima medida necesaria”. Cuando los funcionarios

encargados de hacer cumplir la ley hagan uso de las armas de fuego, estos deberán hacerlo solamente en las condiciones establecidas bajo el Principio 9.

En este contexto, también quisiera recordar el artículo 2 del PIDCP el que prevé que “Toda persona cuyos derechos o libertades reconocidos en el presente Pacto hayan sido violados” dispondrá de “un recurso efectivo” y que “La autoridad competente, judicial, administrativa o legislativa, o cualquiera otra autoridad competente prevista por el sistema legal del Estado, decidirá sobre los derechos de toda persona que interponga tal recurso, y desarrollará las posibilidades de recurso judicial”. Asimismo, la Observación General 31 al PIDCP del Comité de Derechos Humanos prevé que “los Estados Parte infringen estos derechos permitiendo que particulares o entidades cometan tales actos o no adoptando las medidas apropiadas o no ejerciendo el cuidado debido para prevenir, castigar, investigar o reparar el daño así causado”. El Principio 9 de los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias”

Apelo pues al Gobierno de Vuestra Excelencia a fin que conduzca una investigación imparcial y transparente sobre las circunstancias que rodearon la muerte de las víctimas arriba mencionadas a fin de tomar todas las medidas judiciales y disciplinarias que aseguren que los responsables sean traducidos en justicia, así como a fin de compensar a las familias de las víctimas.

Es mi responsabilidad, de acuerdo con el mandato que me ha sido otorgado por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

¿Son exactos los hechos a los que se refieren las alegaciones presentadas?

Por favor, proporcione los detalles y, cuando estuvieren disponibles, los resultados de cualquier investigación policial, judicial u otras que se hubieran llevado a cabo en relación con la muerte de las víctimas. ¿Demostraron las dichas investigaciones si el uso de la fuerza fue legal o no?

Por favor, ofrezca todos los detalles sobre cualquier medida disciplinaria o judicial practicada en relación con los funcionarios de la policía, si alguno hubiera sido hallado responsable.

Por favor, indique cualquier compensación que haya sido atribuida a la familia de las víctimas.

Philippines

Killing of Mr. Bayles- Human Rights Defender

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: 5 males and 1 female

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the Government of the Philippines. He welcomes the investigations that have been instituted into the killing of Mr.

Bayles. The Special Rapporteur regrets that the Government did not provide information on the protective measures are in place to ensure the physical and psychological integrity of witnesses in the trial related to the killing of Mr. Bayles, information on the investigations into the allegations that members of the Armed Forces of the Philippines are threatening and intimidating witnesses in the trial related to the killing of Mr. Bayles and information on the measures are in place to ensure effective investigations into the killing of Mr. Bayles and to prevent interference with ballistic evidence. The Special Rapporteur will continue to engage with the Government on the case.

Urgent appeal dated 29 November 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received 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.

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).

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.

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.

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.

We are 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.

Information made available to us also indicates that there are concerns that the ballistic evidence in the case may have been tampered with.

We welcome the steps that your Excellency's Government has undertaken to secure the arrest of the suspects related to the killing of Mr. Benjamin Bayles. While we do not wish to prejudge the accuracy of these allegations reported to us, we should like to express our 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 may be tampered with.

The International Covenant on Civil and Political Rights (ICCPR) (ratified 23 October 1986) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. Your Excellency's Government has an obligation to take positive measures to protect the right to life and in this regard the Human Rights Committee has pointed out in the case of *Luis Asdrúbal Jiménez Vaca v. Colombia*, (CCPR/C/74/D/859/1999) that "article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction. In the case in question, the State party has not denied the author's claims that the threats and harassment which led to an attempt on his life were carried out by agents of the State, nor has it investigated who was responsible. In the light of the circumstances of the case, the Committee considers that there has been a violation of article 6, paragraph 1, of the Covenant."

We urge your Excellency's Government to adopt measures to provide protection to the witnesses related to the case of Mr. Benjamin Bayles as well as legal counsel for the family of Mr. Ramos. In this regard the Human Rights Committee has noted in the case of *William Eduardo Delgado Páez v. Colombia*, (Communication No. 195/1985) that "Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty. At the same time, States parties have undertaken to guarantee the rights enshrined in the Covenant. It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just because that he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant". This was reiterated in the case of *Luis Asdrúbal Jiménez Vaca v. Colombia*, (CCPR/C/74/D/859/1999). Further the Principles on Effective Prevention and Investigations of Arbitrary, Extra-legal and Summary Executions in particular principle 4 provides that "Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

The mandate of the Special Rapporteur on extrajudicial executions has submitted to the Human Rights Council in a mission report to the Philippines, that "[In Philippines] the absence of witnesses is a key explanation for why extrajudicial executions hardly ever lead to convictions. (Report on Mission to the Philippines (A/HRC/8/3/Add.2) The successful prosecution of those responsible for extrajudicial executions is difficult, if not impossible, in the absence of effective witness protection programmes. Ending impunity for killings thus requires institutionalizing measures to reduce the risks faced by witnesses who testify. Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions (A/63/313).

With regard to the allegation that ballistic evidence in the case of Mr. Benjamin Bayles may be tampered with, we would like to bring to the attention of your Excellency's Government Principle 11 of the Principles on Effective Prevention and Investigations of Arbitrary,

Extra-legal and Summary Executions which provides that “In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure”.

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

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

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

- article 9, para. 3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; 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.

With regard to the allegation of threats against two journalists, Mr. Larry Trinidad and Mr. Jaime Lim, as a result of reporting on Mr. Benjamin Bayles' case, we would like to remind your Excellency's Government of its obligation 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 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.”

We urge your Excellency’s Government to take all necessary measures to ensure accountability of the perpetrators responsible for Mr. Benjamin Bayles’ death. We also request your Excellency’s Government to adopt immediate and effective measures to provide security to the witnesses who are under threat, including Mr. Manuel Bayles, Mr. Benjamin Ramos and Ms. Vilma Tejada, as well as to journalists reporting on the case. Furthermore, we urge your Excellency’s Government to conduct investigations into the allegations of threats and intimidation by the Armed Forces of the Philippines.

We will continue to monitor this case, and we would appreciate receiving information from your Excellency’s Government on the trial relating to the killing of Mr. Bayles.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate what protective measures are in place to ensure the physical and psychological integrity of witnesses in the trial related to the killing of Mr. Bayles, their family members, as well as journalists reporting on the case.
3. Please provide information on the investigations into the allegations that members of the Armed Forces of the Philippines are threatening and intimidating witnesses in the trial related to the killing of Mr. Bayles?

Please indicate what measures are in place to ensure effective investigations into the killing of Mr. Bayles and to prevent interference with ballistic evidence.

Government reply dated 22 March 2011

With reference to your letter dated 29 November 2010, on the case of Mr. Benjamin Bayles, I would like to submit the following information from the Presidential Human Rights Committee of the Philippines based on the investigations made by the Philippine National Police.

A case of murder, criminal case No. 2474 was filed against suspects on 05 July 201 at the Regional Trial Court, Branch 55, in Himamaylan City, Negro Occidental.

On the alleged harassment and intimidation of media men Larry Trinidad and Jaime Lim, both denied that there was such harassment, threat or intimidation against them relative to the case of Bayles.

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, Himalayan City.

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.

Alleged killing of a witness related to the “Manguidanao Massacre”

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

Subject(s) of appeal: 1 male

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur thanks the Government of the Philippines for its response and appreciates the updated information relating to the “Maguindanao Massacre”. However, he regrets that the Government even though it indicated that Mr. Upham was not associated with the case it did not provide information on the results, of any investigation, and judicial or other inquiries carried out in relation to the shooting of Mr. Upham.

Allegation letter dated 19 July 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to bring to your Excellency’s Government’s attention information we have received concerning the death of **Mr. Suwaib Upham**, a witness in the trials related to the “Maguindanao Massacre”.

We have previously addressed your Excellency’s Government in relation to the “Maguindanao Massacre” in a letter dated 30 November 2009, to which your Excellency’s Government replied in communications dated 10 December 2009 and 25 January 2010. The Special Rapporteur on extrajudicial executions has noted in a report submitted to the Human Rights Council that he appreciates the responses provided by your Excellency’s Government about the actions taken by various Government branches and agencies to investigate and prosecute the alleged perpetrators of the Maguindanao massacre. However your Excellency’s Government did not provided 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. Further your Excellency’s Government did not provide the requested information on measures to prevent election-related violence (A/HRC/14/24 Add.1).

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.

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.

While we do not wish to prejudge the accuracy of these allegations, we would like to seek clarification of the circumstances regarding the death of Mr. Upham from your Excellency’s Government.

We would like to refer your Excellency’s Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no

person shall be arbitrarily deprived of his or her life (Article 6). We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons.

We urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in particular Principle 9 to conduct a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions..." This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions". The Special Rapporteur on extrajudicial executions has noted in a report to the Commission on Human Rights that, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.)

With regard to the allegation that security concerns of Mr. Upham had been raised with the Justice Department, we would like to draw the attention of your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in particular Principle 4 which provides that "effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". The Special Rapporteur on extrajudicial executions submitted in his mission to Philippines, that "[In Philippines] The absence of witnesses is a key explanation for why extrajudicial executions hardly ever lead to convictions. (Report on Mission to the Philippines (A/HRC/8/3/Add.2) The successful prosecution of those responsible for extrajudicial executions is difficult, if not impossible, in the absence of effective witness protection programmes. Ending impunity for killings thus requires institutionalizing measures to reduce the risks faced by witnesses who testify. Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions (A/63/313). We urge your Excellency's Government to provide protection to potential witnesses in the Maguindanao massacre trials who are under threat.

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

guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

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

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

We urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the death of Mr. Uphams with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the family of the victim.

We look forward to receiving updated information on the on-going investigations and prosecutions being undertaken by your Excellency’s Government in relation to the Maguindanao massacre and your Excellency’s Government observation on the concerns we raised in the communication dated 30 November 2009.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the shooting of Mr. Upham? Please indicate whether compensation has been or will be provided to the families of the victim.
3. Please indicate the reasons why Mr. Upham was not provided with witness protection.

Please indicate what measures are in place to provide protection to witnesses and members of their families in the trials related to the Maguindanao massacre?

Government reply dated 20 October 2010

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.

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.

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.

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.

Russian Federation

Impunity regarding the deaths of Human Rights Defenders

Violation alleged: Impunity, compensation and the rights of victims

Subject(s) of appeal: 3 females and 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 14 January 2011, sent with the Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection we would like to bring to the attention of your Excellency's Government information we have received regarding **the pattern of impunity regarding the deaths of lawyers and human rights activists including impunity concerning the death of Mr. Sergei Magnitsky**, a lawyer who died in custody on 16 November 2009.

According to information received

Mr. Magnitsky was counsel for a foreign investment firm known as Hermitage Capital Management. In 2008, Mr. Magnitsky voluntarily provided testimony accusing the Russian Interior Ministry and other state officials of stealing about 230 million US dollars from the State budget. It was alleged that this was part of a complex fraud involving the transfer of title of several Hermitage companies and successfully applying for a tax reimbursement of 230 million US dollars, a figure which represented the amount of taxes previously paid by the Hermitage companies to the Russian Federation.

On 24 November 2008, Mr. Magnitsky was arrested and charged with tax evasion. He was never brought before a court of law but was kept in pre-trial detention for 11 months. His lawyers repeatedly filed complaints on the arbitrariness of his detention, however these

were rejected. It is alleged that while in custody he developed pancreatitis and he was denied medical treatment despite repeated requests. On 16 November 2009, he died in custody.

On 17 November 2009, an autopsy was conducted and it indicated that he had died from heart failure. It is alleged that a medical examination conducted on 11 November 2009, indicated that he had gallstones and cholecystitis pancreatitis at an acute stage, but that and after carrying out an electrocardiogram, his health was satisfactory. Mr. Magnitsky's family requested that an independent autopsy be conducted. However this was denied and his body was released to the family on condition that he would be buried immediately.

In December 2009, about 20 members of Russia's penitentiary services were dismissed by the federal Government although it is not clear whether this was in connection with the death of Mr. Magnitsky. The Russian State Investigative Committee announced that there would be a formal criminal investigation into his death. To date no person has been prosecuted for the death in custody of Mr. Magnitsky.

We would like to express our concern at the apparent lack of prosecution regarding the death in custody of Mr. Magnitsky. We would also like to bring to the attention of your Excellency's Government information we have received indicating that there is a lack of prosecution of cases involving the deaths of lawyers and human rights defenders.

We would like to recall the following cases which we have previously brought to the attention of your Excellency's Government, in which we are informed the perpetrators have yet to be brought to justice: (a) The case concerning the murder of **Ms. Natalya Estemirova** which was brought to the attention of your Excellency's Government in a communication dated 20 July 2009. Your Excellency's Government indicated in a reply dated 27 August 2009 that a range of investigative and operational activities to identify the perpetrators of the crime was under way; (b) The case concerning the murder of human rights defender **Ms. Zarema Sadulaeva** and her husband **Mr. Alik Dzhabrailov** which was brought to the attention of your Excellency's Government in a communication dated 14 September 2009. Your Excellency's Government indicated in a reply dated 17 November 2009, that "the requisite investigations and inquiries are being conducted in order to establish who committed this crime". An update on progress in this regard would be appreciated; (c) The case of the murder of **Ms. Anna Politkovskaya** which was brought to the attention of your Excellency's Government in a communication dated 30 October 2006. Your Excellency's Government replied in a communication dated 26 November 2007, that 10 people had been arrested in connection with her murder and "that it has also been possible to identify the person who ordered the murder of Ms. Politkovskaya; however, this person is not available for investigation, since he lives abroad".

We welcome the steps taken by your Excellency's Government to investigate the murder of the victims indicated in this communication, however we remain concerned at the lack of prosecution of the perpetrators. International law requires that in cases of gross violations of human rights including arbitrary executions, States have an obligation to conduct criminal investigations and bring the perpetrators to justice.

We would like to bring to the attention of your Excellency's Government that that States parties to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, are under an obligation to fully investigate and bring to justice the perpetrators arbitrary executions (ICCPR Arts. 2, 6 and 7; Human Rights Committee, General Comment 31 (2004), para. 18). Further, principle 18 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions 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. Governments shall either bring

such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed”.

The Human Rights Committee has observed in the case of *Bautista de Arellana v. Colombia* that the “State party is under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations. This duty applies a fortiori in cases in which the perpetrators of such violations have been identified”. (Communication No. 563/1993, U.N. Doc. CCPR/C/55/D/563/1993 (1995), para 8.6).

With regard to the allegations of denial of medical treatment of Mr. Magnitsky, we would like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.” (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

Regarding the death in custody of Mr. Magnitsky we would like to bring to the attention of your Excellency’s Government that when the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermitt Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2): “While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermitt committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.”

Furthermore, in order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

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

On the basis of the above, we urge your Excellency's Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of Mr. Magnitsky, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations. In this respect we note that Human Rights Council Resolution 8/8, paragraph 6 (b) and (e), urges States to hold responsible not only those who perpetrate torture, but also those "who encourage, order, tolerate or perpetrate acts of torture [...], to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed".

We urge your Excellency's Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violations is ensured and to provide compensation to the family of the victims. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

We would appreciate to receive from your Excellency's Government information on the status of the investigation and prosecution of the cases concerning the deaths of Mr. Sergei Magnitsky, Ms. Natalya Estemirova, Ms. Zarema Sadulaeva, Mr. Alik Dzhabraïlov and Ms. Anna Politkovskaya.

Russian Federation: ill-treatment of Lawyer working on Extrajudicial Killings

Violation alleged: ill-treatment of a lawyer working on cases of serious human rights violations including extrajudicial killings

Subject(s) of appeal: 1 female

Character of reply: Translation awaited

Observations of the Special Rapporteur

The Russian Federation replied to the communication below on 20 December 2010. The Special Rapporteur appreciates the response but unfortunately had not received a translation of it from the relevant services at the time this report was finalized. He is unable, therefore, to make observations, and expects they will be included in the next report.

Allegation letter dated 29 October 2010, sent with the Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning ill-treatment by police officers of Ms. **Sapiyat Magomedova**, a criminal lawyer in Khasavyurt, Dagestan, Russian Federation.

Ms. Magomedova is a member of the "*Omarov and Partners*" lawyers' association based in Khasavyurt, which is known for its work on cases of serious human rights violations committed by members of law enforcement agencies in Dagestan, including alleged enforced disappearances, torture and extrajudicial executions.

According to the information received

On 17 June 2010, Ms. Magomedova was allegedly severely beaten by the police and forcibly removed from Khasavyurt town police station (GOVD) where she was reportedly visiting a detained client.

Twice an ambulance was called by Ms. Magomedova's colleague but was not allowed to enter the GOVD premises. It had to be called a third time and then collected her outside the police checkpoint. On 17 June 2010, Ms. Magomedova was admitted to the local hospital in Khasavyurt. Local doctors reportedly refused to document Ms. Magomedova's injuries for

fear of reprisals by law enforcement officials, and discharged her from hospital with only a brief medical referral note. On 18 June 2010, Ms. Magomedova was transferred to the central hospital in Makhachkala.

The medical records obtained from the central hospital in Makhachkala are available and confirm Ms. Magomedova's injuries are consistent with her allegations.

It is reported that since the conditions in the central hospital in Makhachkala were inadequate, on 21 June, Ms. Magomedova's family transferred her to a private medical center in Makhachkala where she received adequate treatment. On 30 June, Ms. Magomedova left the medical centre. It is reported that while in the medical center, Ms. Magomedova became aware of a visit by a police inspector who reportedly questioned the medical personnel about the need for Ms. Magomedova's continued hospitalisation at the medical centre.

It is reported that since Ms. Magomedova's health conditions continued to remain unsatisfactory, she travelled to Moscow to get adequate treatment. On 8 July 2010, with the help of a local NGO called "Grazhdanskoe Sodeistvie" ("Civil Partnership"), Ms. Magomedova was admitted to Moscow City Clinical Hospital no. 31. On 31 July 2010, Ms. Magomedova completed her treatment.

It is reported that in August 2010, Ms. Magomedova was diagnosed with a tumor in her chest and underwent surgery in another hospital in Moscow. She remained in Moscow to undergo further health examination and regular check-up.

On 17 August 2010, Ms. Magomedova had to fly back to Dagestan to visit her mother who was unwell. Ms. Magomedova was scheduled to visit her doctor in Moscow in October.

It is reported that following Ms. Magomedova's allegations of being severely beaten by police, a criminal case was launched against her on charges of "public insult of state officials while on duty". It is claimed that if convicted, Ms. Magomedova would also be stripped of her license to practice law as a lawyer.

On 30 September 2010, travel restrictions were issued preventing Ms. Magomedova from travelling to Moscow where she was reportedly getting medical care and legal support regarding the criminal allegations brought against her.

Concern is expressed that Ms. Magomedova may be targeted for her legitimate activities as a lawyer. Furthermore, it is reported that although a criminal case on police ill-treatment has been launched following the attack on Ms. Magomedova, there have reportedly been a number of serious procedural violations, fabrication of false evidence, and political pressure on the investigator.

Further concerns are expressed regarding the physical integrity and safety of Ms. Magomedova as the police officers have not been suspended from their official duties while a criminal investigation of alleged ill-treatment has been launched against them.

While we do not wish to prejudge the accuracy of these allegations, we wish to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, from 27 August to 7 September 1990, and in particular to:

- Principle 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics;

- Principle 17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities;
- Principle 18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions;
- Principle 20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority;
- Principle 23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession; and

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Ms. Magomedova. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Additionally, we would like to draw your Excellency's Government's attention to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. I would also like to draw your Government's attention to paragraph 6(b) of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Magomedova are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

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

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

Has a complaint been lodged?

Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

Please provide information on the current situation of Ms. Magomedova. Has any measure been taken to guarantee her security as well as the security of her family?

Please indicate whether compensation has been provided to Ms. Magomedova or to her family.

Government reply dated 20 December 2010

Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations at Geneva

No.: 512

The Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations at Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit herewith information in connection with the enquiry of the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture (AL G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24) RUS 7/2010).

The Permanent Mission takes this opportunity to convey to the Office the renewed assurances of its highest consideration.

Geneva, 20 December 2010

Rwanda

Killing of a journalist Mr. Rugambage

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

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

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 6 July 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to bring to your Excellency Government's attention information we have received concerning the death of **Mr. Jean Leonard Rugambage**, Deputy Editor of the Rwandan local-language *Umuwugizi* newspaper.

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.

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.

In 2007, Mr. Jean Bosco Gasasira, Editor of *Umuvugizi*, fled into exile in a neighbouring country after being assaulted by unidentified men in Kigali.

Grave concern is expressed that the killing of Mr. Rugambage may be linked to the exercise of his right to freedom of opinion and expression. Further concern is expressed for the physical and psychological integrity of journalists of *Umuvugizi*, and more generally, for journalists throughout the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to seek clarification of the circumstances regarding the death of Mr. Rugambage. In this regard we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. We would like to refer your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

We welcome the investigations that have been opened by the Police and we would also like to draw the attention of your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 4 provides that "effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". Further Principle 9 states that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions..." This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible ...to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71).

Furthermore, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to

seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter the Declaration), 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".

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

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

We urge your Excellency's Government to take all necessary measures to ensure the accountability of any persons responsible for the death of Mr. Rugamage. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

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

4. Please indicate what protective measures are to be taken to protect journalists of *Umuwugizi*.

Saudi Arabia

Imminent execution of a juvenile offender- Ms. Nafeek

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: 1female

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 1 November 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the imminent execution of **Ms. Rizana Nafeek** on charges of murder. The alleged offence was committed when she was 17 years old.

My predecessor had previously brought to the attention of your Excellency's Government the case of Ms Rizana Nafeek in a communication dated 28 June 2007, in which concern was raised on the imposition of the death penalty for a crime committed when she was still below eighteen years of age. Your Excellency's Government replied in a communication dated 21 January 2008, indicating that "with regard to the woman's age (17 years) at the time of commission of the crime, the regulations applied in the Kingdom stipulate that a person can be held criminally responsible for acts that he commits after reaching the age of majority, which differs from one individual to another and might exceed 18 years". Further your Excellency's Government indicated that the case was still under consideration and that the sentence was subject to confirmation by the Supreme Council of the Judiciary.

According to information now received

The Supreme Council of the Judiciary referred the case to the original court in Dawadmi for reinvestigation. The sentence was upheld by the Court of Cassation and sent for ratification by the Supreme Council of the Judiciary. However the Council sent it back for further clarification. In March 2008, the case was appealed before the High Court in Riyadh. At the trial it was alleged that after her arrest, Ms Nafeek did not have access to a translator to enable her to explain the circumstances that led to the death of the child who was in her care. It was submitted by the defense that she was made to sign a confession under duress. The court summoned the person who took the confession for examination. In November 2008, the High Court announced that the person left Saudi Arabia and thereafter the case was adjourned several times as he could not be located.

Information made available to me indicates that on or about 25 October 2010, the Supreme Court upheld the death sentence. The case has been sent to His Majesty King Abdullah Bin Abdul Aziz Al-Saud for ratification.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw your Excellency's Government's attention to the fact that any judgments imposing the death sentence and executions of juvenile offenders are incompatible with the international legal

obligations which the Kingdom of Saudi Arabia has undertaken under various instruments. Article 37(a) of the Convention on the Rights of the Child, to which the Kingdom of Saudi Arabia is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age.

The Committee on the Rights of the Child has observed in its General Comment No. 10 on children's rights in juvenile justice that "Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age... It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction. The Committee recommends the few States parties that have not done so yet, abolish the death penalty for all offences committed by persons below the age of 18 years and to suspend the execution of all death sentences for those persons until the necessary legislative measures abolishing the death penalty for children have been fully enacted. The imposed death penalty should be changed to a sanction that is in full conformity with CRC" (CRC/C/GC/10 paras 75-76).

In view of the urgency of this matter and of the irreversibility of the punishment of the death penalty, I would respectfully request your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with the internationally recognized standards of international human rights law concerning the absolute ban of capital punishment against juvenile offenders. I, therefore, urge your Excellency's Government to take all steps necessary to prevent the execution of Ms Rizana Nafeek by putting it on hold with a view to commuting her death sentence.

Sri Lanka

Death in custody

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 5 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 13 October 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the independence of judges and lawyers.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the deaths in custody of Mr. Dhammala Arachchige Lakshman, Mr. Amarasinghe Arachchige David, Mr. Appuhandhi Kotahewage Nayanajith Prasanna, Mr. Jayakody Arachchilage Oman Perera and Mr. Jayasekara Arachchige Roshan Jayasekara.**

We are informed that there is a pattern of police officers killing detained suspects as a means of eliminating organized crime. Such cases are not being investigated or prosecuted before the courts.

According to information received

On 13 August 2010, Mr. Amarasinghe Arachchige David was arrested by officers from the Kirindiwela Police Station. He was placed into a police vehicle and on their way to the police station, the vehicle stopped along the main road at Papiliyawala to conduct a search on two people. Mr. David got out of the vehicle and watched the police officers conduct the search. The police officers, after noting that Mr. David had stepped out of the vehicle, approached him and beat him on his back and hip areas. He was then dragged towards the vehicle where the officers beat him against the rear door shouting "Are you trying to escape from us". Mr. David was taken to Kirindiwela Police Station and later admitted at the Government hospital of Radawana. He was transferred to the National Hospital of Colombo; however he later died from the injuries sustained. On 15 August 2010, a post-mortem examination indicated that he had died as a result of head injuries. It is alleged that the police are reluctant to conduct an investigation into the death.

On 25 August 2010, Mr. Jayasekara, of Ranaviru Niwasa, Morakatiara, Beliattha was arrested by the Ragama Police Station and taken to Kiribathgoda police station. He was arrested on suspicion of having stolen a mobile phone at Ragama Railway Station. On 26 August 2010, a police officer brought the body of Mr. Jayasekara to Ragama Teaching hospital; however he did not wish to be registered as the person who brought in the body. On 27 August 2010, the police constable of the Kiribathgoda Police Station registered as the person who delivered the body. A post mortem that was conducted by the judicial medical officer at the Ragama Teaching Hospital revealed marks of numerous blunt force trauma injuries.

On 31 August 2010, Mr. Jayakody Arachchilage Oman Perera of No. 22, Palle Kalley Janapadaya in Kurunegala was arrested by officers from the Special Task Force. After his arrest Mr. Perera was placed in a police jeep and as he was being driven to Colombo, he was shot. It is alleged that as the vehicle was near the Japalawatta Industrial Zone junction in Minuwangoda, Mr. Perera attempted to escape. He was taken to Minuwangoda Hospital and later transferred to the Intensive Care Unit of the General Hospital, Gampaha. He died the same day from the injuries sustained.

On 20 September 2010, Mr. Dhammala Arachchige Lakshman was arrested by the police and held in custody at the Hanwella police station. On 22 September 2010, he was taken to a location in Diddeniya in Hanwella for an on-sight investigation to uncover weapons. It is alleged that he attempted to escape from police custody by throwing a bomb at the police officers and was shot. He sustained injuries and died at the Avissawella hospital the same day. During his detention the deceased was not brought before a court.

On 22 September 2010, Mr. Prasanna of No. 1B, Balawinnagama, Balawinna, Balapatha was arrested by the police officers from the Moratuwa Police Station. On 25 September 2010, he was found in his cell with severe cuts to his abdomen and was admitted at the Kalubowila Teaching Hospital. On 26 September 2010, he died from the injuries sustained. The police indicated that he had attempted to commit suicide with a shard of glass found inside his cell. During his detention he was not brought before a Magistrate as required by the Code of Criminal Procedure No.15 of 1979.

We are informed that in the recent past, the police have increasingly been arresting people without producing them before a court of law in contravention of the Code of Criminal Procedure No.15 of 1979 which stipulates that police officers should produce a suspect arrested on suspicion of committing a crime before a Magistrate within 24 hours. "Any police officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate."

While we do not wish to prejudge the accuracy of the reports received, we would like to seek from your Excellency's Government information concerning the deaths of Mr. Dhammala Arachchige Lakshman, Mr. Amarasinghe Arachchige David, Mr. Appuhandhi Kotahewage Nayanajith Prasanna, Mr. Jayakody Arachchilage Oman Perera and Mr. Jayasekara Arachchige Roshan Jayasekara, and compliance with pre-trial detention safeguards for suspected criminals.

In this respect, we would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. The International Covenant on Civil and Political Rights, to which Sri Lanka 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).

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

With respect to the use of force by police officers, we would like to bring to the attention of your Excellency's Government the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles") law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, principle 4). 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) and intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, principle 9). The Special Rapporteur on Summary Executions has presented to the General Assembly at its sixty first session that 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. 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" (A/61/311, paras 41- 45).

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ... to grant

adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”.

With regard to the allegation that there is a pattern of extra-judicial execution of detained persons, we would like to recall that the obligation of the State is not only to prohibit and prosecute killings by guards or other officials, but also to prevent deaths and to respond effectively to the causes of the deaths (A/61/311 para. 50). The Human Rights Committee has noted in its General Comment No. 6 that “The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities”. In its General Comment No. 31 the Committee noted that “As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6)”

With regard to the allegation that detained persons are not brought before the courts within the prescribed period, we would like to refer your Excellency’s Government to the International Covenant on Civil and Political Rights, to which your Excellency’s Government is a party, and in particular article 9 (4), which states that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” The Human Rights Committee in General Comment No. 8 has stated that “Paragraph 3 of article 9 requires that in criminal cases any person arrested or detained has to be brought “promptly” before a judge or other officer authorized by law to exercise judicial power. More precise time-limits are fixed by law in most States parties and, in the view of the Committee, delays must not exceed a few days.” We note that your Excellency’s Government, under the Criminal Procedure Code No.15 of 1979, has provided the time limit to be 24 hours, we therefore urge your Excellency’s Government to take measure to ensure compliance with this provision.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. I would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context, we would like to draw your Excellency’s Government’s attention to paragraph 1 of Human Rights Council Resolution 8/8 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

In addition, we would like to draw your Excellency’s Government’s attention to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires

State parties to prosecute suspected perpetrators of torture. I would also like to draw your Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;"

We urge your Excellency's Government to carry out inquiries into the circumstances surrounding the deaths of Mr. Lakshman, Mr. David, Mr. Prasanna, Mr. Perera and Mr. Jayasekara expeditiously, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate their families. We also urge your Excellency's Government to take measures to prevent further recurrence of the alleged violations and to ensure compliance with pre-trial detention safeguards.

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

1. Are the facts alleged in the case summary accurate?
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to these cases. Please provide the details of any compensation payments made to the families or dependants, if any.
3. Please provide the details of any criminal prosecutions and/or disciplinary measures in relation to persons found to be responsible, either as perpetrators or as responsible superiors, for the death in custody of Mr. Lakshman, Mr. David, Mr. Prasanna, Mr. Perera and Mr. Jayasekara.
4. Please provide information on measures taken to ensure compliance with international standards on the use of firearms by law enforcement officials. Further please provide an explanation on how force is used to prevent the escape of detained persons in accordance with the rules and principles pertaining to proportionality and necessity.
5. Please explain the steps taken to prevent further recurrence of deaths in custody and to address the alleged pattern of extra-judicial executions of detained persons.
6. Please explain the steps to ensure compliance with pre-trial safeguards as recognized under international law.

Sudan

Alleged killing by Sudanese Security Forces

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 26 March 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding the killing of **Mr. Mohamed Abdella Musa Bahraldien**, by Sudanese security forces in Kartoum.

According to information received

On 10 February 2010, Mr. Mohamed Abdella Musa Bahraldien, a native of Kebkabiya in North Darfur and a member of the United Popular Front (UPF), a student organization loyal to the rebel leader Abdel Wahid Al-Nur, was abducted in front of the University of Khartoum. Reports indicate that he was taken by Sudanese security forces to an unknown destination. According to these reports, his body was found the following day in Al-Gamayir neighborhood in Omdurman, showing signs of torture and mistreatment. According to the autopsy, signs of burns, beatings and strangulation were found.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

With regard to the allegation on the use of excessive force by the security forces, we would like to bring to the attention of your Excellency's Government 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). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

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

In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified,

and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

In cases where there is an allegation of extra-judicial execution, Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. We would also like to draw your Excellency's Government's attention to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. Further paragraph 3 of Human Rights Council Resolution 8/8, urges States “To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture”.

We urge your Excellency's Government to conduct an impartial inquiry into the circumstances surrounding the death of Mr. Mohamed Abdella Musa Bahraldien, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

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

Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the disappearance and death of Mr. Mohamed Abdella Musa Bahraldien.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to security agents found responsible.

Please indicate whether compensation has been provided to the families of the victims.

Syrian Arab Republic

Alleged violation of due process guarantees in capital punishment cases

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment.

Subject(s) of appeal: 1 female

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 12 November 2010, sent with the Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on violence against women, its causes and consequences.

In this connection, we would like to draw the attention of your Excellency's Government to information we have recently received regarding the situation of Ms. **Eliaza al-Saleh**, a mother of three teenagers, who was sentenced to death on 29 September 2009, by the Military Criminal Court in Homs for acting as an accomplice in the murder of her husband, Fouad al-Naqari, on 26 July 2007. The sentence was confirmed by the Court of Cassation on 2 March 2010. Information now made available to us indicates that she has been moved from her cell to prepare for her execution.

According to the information received, Ms. Al Saleh is the victim of several years of spousal, physical and sexual abuse by her husband, Fouad al-Naqari. It is reported that, on at least one occasion, Mr. Al Naqari had forced Ms. Al Saleh to sleep with his debtor in order to defray a debt he owed them. It is also alleged that Mr. Al Naqari would humiliate her by stripping her naked and ordering her to get things for him by carrying them in her mouth. On another occasion Mr. Al Naqari brought another woman home and, when Ms. Al Saleh disapproved of this, he slapped her and ordered her to crawl around the house in front of the other woman. It is also reported that Mr. Al Naqari raped and frequently beat her, with various items including a knife, which resulted in a tear in her mouth, a broken rib and broken shoulder.

During interrogation it is alleged that she confessed to the charge that she had acted as an accomplice to her husband's killing even though she subsequently denied the charge during trial. In any case, the court did not examine the circumstances of the offense, including the possible mitigating circumstances.

Without prejudging the accuracy of these allegations, we would like to bring to the attention of your Excellency's Government that, especially in capital punishment cases, there is an obligation to scrupulously respect the rights of the accused including the right to provide criminal defendants with "a fair and public hearing before an independent and impartial tribunal" (article 14 of the International Covenant on Civil and Political Rights). In this respect, with regard to the fact that the death sentence was issued by a military court, we would like to bring to the attention of your Excellency's Government the recommendations made by the former Commission on Human Rights which has called upon "States that have military courts or special criminal tribunals for trying criminal offenders to ensure that such courts are an integral part of the general judicial system and that such courts apply due process procedures that are recognized according to international law as guarantees of a fair trial including the right to appeal a conviction and sentence" (Resolution 2004/32). The observations of the Human Rights Committee also provide guidance as it has observed in its General Comment n° 32 that "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned".

The Basic Principles on the Independence of the Judiciary, in particular article 6, further stipulate that "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the

parties are respected". Relevant to the case at hand is the requirement of fully protecting individual rights and freedoms and respect for the various procedural rights which includes the requirement of examining all the circumstances of each offense, including possible mitigating circumstances for the accused. Only the full respect of due process guarantees in the trial makes it possible to distinguish between the application of death penalty and a summary or arbitrary execution. In fact, the imposition of the death penalty resulting from a trial which does not conform to the principles and standards of a fair trial represent an arbitrary deprivation of life.

With regard to the allegations of physical and sexual abuse, we would like to draw your Government's attention to paragraph 2 of General Comment 20 of the Human Rights Committee, which provides that, "The aim of the provisions of article 7 [on the prohibition of torture and other cruel, inhuman and degrading treatment or punishment] of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity" (adopted at the 44th session of the Human Rights Committee, 1992). Further we would like to bring to your Excellency's attention, Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

Lastly, your attention is drawn to paragraph 18 of General Comment 2 of the Committee against Torture, which states that "where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking".

In view of the urgency of this matter and of the irreversibility of the punishment of the death penalty, it is imperative that your Excellency's Government should take all steps necessary to prevent the execution of Ms. Eliaza al-Saleh.

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

1. Are the facts alleged above accurate?

Please indicate the specific conduct that Ms. Eliaza al-Saleh was found guilty of and the legal basis of the death sentence imposed against her.

Please provide information as to why Ms. Eliaza al-Saleh was tried by the Military Criminal Court and please indicate the type of offences in which the military courts have jurisdiction to try civilians.

Please indicate what measures are put in place to ensure that due process guarantees are respected in military courts in accordance with international law standards for fair trial

Please indicate if and how Ms. Al Saleh's history of physical and sexual abuse by her husband was taken into account during the proceeding that led to her sentencing.

Please indicate if Ms. Al Saleh filed any complaints regarding the physical and sexual abuse she was subjected to by her husband and the measures taken by the authorities to investigate such claims.

While answers to the above are outstanding, we request you not to execute Ms. Eliaza al-Saleh.

Death in custody

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 14 September 2011, send with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding **deaths in custody of Mr. Jalal Al-Kubaisi and Mr. Wade' Sha'bouk.**

According to information received

Mr. Al-Kubaisi, aged 33, was arrested on 27 May 2010 in Al-Hamidiyeh Souk in Damascus by the criminal security services - Damascus branch. He was taken to an unknown location. Members of his family inquired from the criminal security services of his whereabouts and the charges against him, but they refused to comment on the situation. On 31 May 2010, agents from the criminal security services informed the family of Mr. Al-Kubaisi that he was unwell. On 1 June 2010, the family of Mr. Al-Kubaisi was informed that "he has fallen on the floor and was transferred to Al-Mojathed hospital but it was too late".

When the members of his family went to the hospital, they noted that Mr. Al-Kubaisi had been tortured. People who were arrested together with the deceased reported that he had been beaten on his chest and head by five members of the criminal security services. Mr. Al-Kubaisi's family lodged a complaint with the Prosecutor general in Damascus, who ordered an investigation and an autopsy to determine the cause of death. On 7 June 2010, the medical commission reported that his death was caused by a collision with a solid object and that he had bruises on his entire body. The commission indicated that they were unable to determine the cause of the bruises due to lack of technology.

Mr. Sha'bouk, aged 53, had on 13 July 2010 gone to the criminal security services -Aleppo branch in the Al-Ashrafiya region- to provide documents for the release of his son who was in custody on allegations of evading compulsory military services. Mr. Sha'bouk was brutally beaten and suffered a heart attack. Hours later he was taken to the hospital and he died the same day. Reportedly a member of the criminal security forces attempted to pressure the family of the deceased into signing a document attesting that he was healthy when he was presented to the criminal security services.

While we do not wish to prejudge the accuracy of these allegations, we would like to seek clarification from your Excellency's Government regarding the deaths in custody of Mr. Jalal Al-Kubaisi and Mr. Wadee' Sha'bouk.

We would like to draw the attention of your Excellency's Government to the fundamental principles under international law applicable to this case. Article 6 of the International Covenant for Civil and Political Rights (ICCPR), to which the Syrian Arab Republic is a party, states that no one shall be arbitrarily deprived of his or her life. Article 7 of the same Covenant provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant."

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". These obligations to investigate, identify those responsible and bring them to justice arise also under articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to draw your Excellency's Government's attention to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and to article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. I would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;".

We urge your Excellency's Government to carry out inquiries into the circumstances surrounding the deaths of Mr. Jalal Al-Kubaisi and Mr. Wade' Sha'bouk, expeditiously, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate the victims' families. We also urge your Excellency's Government to take measures to prevent further recurrence.

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

1. Are the facts alleged in the case summary accurate? If not, please provide all relevant information and documents demonstrating their inaccuracy.
2. Please indicate the legal basis for the arrest and detention of Mr. Jalal Al-Kubaisi and Mr. Wade' Sha'bouk.
3. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to these cases. Please provide the details of any compensation payments made to the families or dependants, if any, of Mr. Jalal Al-Kubaisi and Mr. Wade' Sha'bouk.
4. Please provide the details of any criminal prosecutions and/or disciplinary measures in relation to persons found to be responsible, either as perpetrators or as responsible superiors, for the death in custody of Mr. Jalal Al-Kubaisi and Mr. Wade' Sha'bouk.
5. Please explain the steps taken to prevent further recurrence of deaths in custody.

Thailand

Death in custody

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 1male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the comprehensive response received from the Government of Thailand. He welcomes the measures that have been adopted to investigate the death in custody of Mr. Naesa.

Allegation letter dated 23 July 2010, sent with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the death in custody of **Mr. Sulaiman Naesa**.

According to the information received

Mr. Sulaiman Naesa, aged 25, was arrested on 22 May 2010 on security-related charges. He was taken to Ingkhayuth army base in Pattani, where he was visited by his family on 23, 24, 25 and 26 May. On 27 and 28 May, the family of Mr. Naesa was not allowed to see him. On 29 May, Mr. Naesa looked tired, walked slowly and unevenly, and told his family that "it was too hard and he could not bear it". On that day, his family was neither allowed to talk closely with him nor touch him.

On 30 May 2010, the authorities informed Mr. Naesa's family that he had been found dead in his cell. According to the prison officers, he hanged himself with a towel tied to the window, while his feet touched the floor and his knees were bent. When the autopsy was carried out, the doctor found a wound on the left side of his neck, wounds on his face and forehead, two fresh small wounds on his lower back, small wounds on the testicles and blood around the genitals. When inquiries were made into the wounds, the authorities indicated that they were insect bites. Later that day, a second, unofficial autopsy was carried out by a doctor from Yuparaj Saibur Hospital. He also found bleeding spots, particularly on the lower back and genitals, possibly due to electric shock. The small holes on the back were believed to be from stabbing with a sharp object. His neck was broken and his teeth were loose. Another detainee who was arrested on the same day as Mr. Naesa informed his family that Mr. Naesa had been suffocated with a black bag. However, he did not provide additional information due to fear of reprisals.

While we do not wish to prejudice the accuracy of the allegations, we would like to draw your Excellency's Government's attention to the fundamental principles applicable under international law to these cases. Article 7 of the International Covenant on Civil and Political Rights, to which Thailand is a party, provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (see for instance the Human Rights Committee's views in the case of *Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2).

To overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

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

We urge your Excellency’s Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of Mr. Sulaiman Naesa, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his family. In this respect we note that Human Rights Council Resolution 8/8, paragraph 6 (b) and (e), urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate acts of torture [...], to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed”.

We urge your Excellency’s Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts.

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

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

Please indicate whether compensation has been provided to the family of the victim.

Government reply dated 12 January 2011

I wish to refer to your letter dated 23 July 2010, which was jointly signed by your predecessors, Mr. Philip Alston and Mr. Manfred Nowak, concerning various allegations surrounding the death in custody of Mr. Sulaiman Naesa in Ingkhayuth army base.

In this connection, I have the honour to forward herewith some pertinent information and observations as prepared by the Ministry of Foreign affairs in cooperation with the authorities concerned. The information clarifies a number of issues raised in the said letter, such as the accuracy of the allegation and measures taken by relevant authorities. It should be noted that the case is currently under judicial process where the Court of Pattani Province is required to conduct a legal inquiry into the cause and circumstances of Mr Naesa’s death. Mr. Naesa’s parent has also lodged an appeal for justice with the National Human Rights Commission (NHRC). The result of this inquiry has not been released.

Nevertheless, preliminary remedies have been provided to Mr. Naesa's family by the Internal Security Operations Command.

In this light, I wish to reaffirm Thailand's commitment to upholding basic human rights in accordance with the Thai Constitution and the country's obligations under international human rights instruments to which it is a party. The Thai Government and the security forces are acutely aware that any mistreatment and abuse of people will defeat the main policy and objectives to build trust and confidence with the local Muslim population in Thailand Southern Border Provinces (SBP's). Strict orders have therefore been issued to all ranks to uphold the law and always treat the people, whether they are suspected perpetrators of violence or otherwise, with dignity and justice.

In concluding, I wish to reaffirm our readiness to engage constructively with both of you in your capacity as mandate holders of Special Procedures. We will keep you closely informed of any developments regarding your inquiries. Meanwhile please do not hesitate to contact our Permanent Mission in case of any further questions that you may have.

Information and observations by Thailand regarding the death of Mr. Sulaiman Naesa

Summary of allegations: Mr Sulaima Naesa was found dead in his cell at the Ingkhayuthbariharn army base in Pattani Province on 30 May 2010. According to the prison officers, he hanged himself. Wounds are found on his body. His neck was brokedn and his teeth were loose. Another detainee informed Mr. Naesa's family that Mr. Naesa had been suffocated with a black bag.

Reply to the allegations

Are the facts alleged in the above summary of the case accurate? /Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case.

At 08.00 hours on 30 May 2010m during the breakfast serving routine, the military officer at the Centre for Promotion of Reconciliation, Ingkhayuthbariharn army base found Mr. Sulaiman Naesa dead with his neck toed t the window in his room. Upon the discovery of his death, the Commander of the Internal Security Operations Command (ISOC) 4th region immediately ordered and open and transparent inquiry. An inquiry committee was established comprising 16 parties/agencies such as forensic experts, medical experts, police officials, civil society and media representatives, civil servants, attorney and lawyer as well as Mr. Naesa's parents and relatives. An immediate examination of the body and post-mortem inquest was conducted in from of all these parties, with the various steps taken and findings explained in detail to the committee members. Every individual in attendance accepted that Mr. Naesa committed suicide. The two doctors on the inquiry committee, one from Ingkhayuthbariharn camp hospital another from from Nong Jik Hospital who was brought in at the request of a local NGO workers to ensure neutrality, subsequently issued a post mortem inquest report which mentioned no signs of mistreatment as alleged.

The results of the examination and post mortem inquest were also collaborated by the expert testimony before the said inquiry committee of another doctor, who is the head of Forensic Science Section, Medical Department, Songkhla Nakrin University.

The medical examination results revealed that Mr. Sulaiman Naesa died 8-12 hours before his body was discovered. The bruise on his neck was caused by being tied by a towel. The doctors concluded that Mr. Naesa was not tortured or murdered but had used a towel to tie his own neck to commit suicide. He was suffocated by hanging. Thus his brain cells were starved of blood supply, which eventually led to death.

As for the wounds alleged found on the body, these are consistent with the death throes or the effect of gravity on blood after death, as well as Mr. Naesa's previous conditions or other circumstances at the site.

Moreover, subsequent forensic tests were conducted by a team of forensic experts from the Central Institute of Forensic Science Thailand reputed for its transparency and impartiality. The tests showed that the DNA on the towel and body of Mr. Naessa were that of Mr. Naesa's body and nobody else. This indicated that no one else contributed to interfered with his death. Such conclusion is also reaffirmed by Mr. Arrobi Ruesa, a suspect in the next room, who stated that on the night of 29 May 2010, there was no sound of any bodily assault or any call for help. He was only aware of Mr. Naesa's death in the morning.

Since this is an unnatural death, the police then forwardsd the investigation file to the provincial attorney in accordance with the Criminal Procedure Code. Currently the case has been in the judicial process where the Court of Pattani Province is required to conduct a legal inquiry into the cause and circumstances of Mr. Naesa's death.

Has a complaint been lodged?

At no time prior to or after Mr. Sulaman Naesa's death did the Thai Government receive any complaint of abuse or mistreatment Mr. Naesa's father admitted himself while giving testimony to the police that his son was not mistreated by army officials which staying at the Ingkhayuthbariharn army base. He and his wife were allowed daily visits to his son from the time Mr. Naesa was invited for questioning in accordance with normal procedure at the Centre for Promoting Reconciliation. However on 27 May 2010, Mr. Naesa's parents could not visit the son because the staff responsible for accompanying residents for family visits were occupied with urgent matters. On 28 May 2010, his father and sister could not see him because Mr. Naesa and the officers had gone to inspect the crime sites.

Nevertheless to further establish the facts, requests have been made to launch independent inquiry into the death. Mr. Naesa's parent lodged an appeal for justice with the National Human Rights Commission (NHRC) which set up its own committee to investigate the cause of the death. The results of the NHRC inquiry have not been yet revealed.

Thus at present time, Mr. Naesa's parents have not pressed a formal complaint against anybody.

Please indicate whether compensation has been paid to the family of the Victim.

Pleliminary remedy has been provided to Mr. Naesa's family by the ISOC which includes payment of funeral costs, financial assistance and food supply to the family.

Additional information

To this end, the Thai Government would like to reaffirm its firm commitment to upholding basic human rights in accordance with the Constitution and obligations under international human rights instruments to which it is a party including the Convention against Tortuere and other Cruel, Inhuman or Degrading Treatment or Punishment. One of the main policy objectives in Thailand Southern Border Provinces (SBP's) is to build trust and confidence with the local Muslim population. The Thai Government and the security forces are acutely aware that any mistreatment and abuse of people will effectively defeat this objective. As a result through out the military chain of command, strict orders have been issued to all ranks to uphold the law and treat the people whether they are suspected perpetrators of violence or otherwise, with dignity and justice. Regulations of Ingkhayuthbariharn army base regarding the treatment of persons invited for questioning in accordance with international human rights standards and are strictly adhered to, while human rights training as well as human rights soldiers cards and manuals have been regularly provided to all security personnel in the SBP's. All cases are investigated without exception in accordance with the

rule of law and the principle of impartiality and transparency and the case of Mr. Sulaiman Naesa is no exception.

Excessive use of force during demonstrations

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

Subject(s) of appeal: Group concern

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the Government of Thailand and the explanations provided. He however regrets that the Government did not provide information on *inter alia* steps have been taken to hold those responsible for these killings, both as material perpetrators and as commanders or instigators, criminally accountable; steps, being taken to address the use of force by the security forces; and information on the terms of reference of the National Truth and Reconciliation Commission of Thailand.

Allegation letter dated 6 July 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to follow up on the killings that occurred during clashes between the security forces and anti-government protesters during the period of 12 March to 20 May 2010, which have resulted in at least 88 deaths and more than 1,800 injured.

In a previous communication dated 16 April 2010, I addressed your Excellency's Government with regard to killings which occurred during the clashes on 10 April 2010, where live ammunition was allegedly used by security forces against protesters. At least 21 people were killed, including 4 military and 17 civilians and over 700 persons were injured. I have yet to receive a response to this communication.

According to new information provided to me

The second series of violent clashes occurred between 13 and 19 May 2010. The army reportedly launched "Operation Ratchaprasong" in which it sought to seal off the main protest site. On 14 May 2010, your Excellency's Government's Center for the Resolution of the Emergency Situation (CRES) indicated the instances in which army troops and police might use live ammunition namely: 1) as warning shots by shooting into the air, 2) for self-defence so as to protect the lives of officers when absolutely necessary, and 3) to shoot at those clearly identified as armed terrorist elements carrying war weapons, guns or grenades and aiming at security officers.

It is alleged that after these directives from CRES, the army, on 16 May 2010, established "live fire zones" adjacent to the protest site. The army fired live ammunition using long-range rifles against unarmed people who reportedly posed no threat to the soldiers or to others.

Reports made available to me also indicate that during "Operation Ratchaprasong" the army used excessive force resulting in the deaths of least 5 unarmed people. On 13 May, Major General Khattiya Sawasdipol, a suspended army specialist known as "Seh Daeng" (Commander Red) who was acting as military adviser for the protesters, was shot in the head - apparently by a sniper - while talking to international media. He later died on 17 May 2010. Further, it is reported that two doctors who were wearing white medical

uniforms with a red cross, were shot and killed on or about 15 and 16 May; and a 17 year-old boy was shot and killed on 15 May 2010. It is also reported that, on 19 May 2010, the army used excessive force against unarmed persons who had sought refuge in Wat Pathum Wanaram, a temple near the protest site. The temple had been declared a “safe zone” for the protesters, especially women, children and elderly people, who had taken refuge there seeking protection from the clashes. Nevertheless, several people were reportedly injured and six bodies, including that of a Red Cross volunteer nurse, were later found in the temple premises.

Following these events, Prime Minister Abhisit Vejjajiva stated, on 21 May 2010, that “an independent investigation of all the events that have taken place during the protests” would be carried out “in a transparent manner”. On 8 June 2010, the Cabinet passed a resolution to set up a “National Truth and Reconciliation Commission of Thailand” and appointed former Attorney General Khanit Nanakorn to chair it. The Chair has been given a mandate to select the Commissioners and develop the Terms of Reference (TOR) of the Commission. Reports made available to me indicate that the work of the Commission is not intended at finding who should be held accountable for human rights violations that may have occurred during the clashes.

I am also concerned that, on 7 April 2010, in response to the protests, your Excellency’s Government introduced the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (Emergency Decree), with its coverage subsequently extended on 13 and 20 May 2010, and that it remains in force in Bangkok, Nonthaburi, Samut Prakan, Pathum Thani, Nakhon Pathom, Ayutthaya, Chonburi (except Pattaya), Chiang Mai, Chiang Rai, Lampang, Nakhon Sawan, Nan, Khon Kaen, Udon Thani, Chaiyaphum, Nakhon Ratchasima, Si Sa Ket, Ubon Ratchathani, Nongbualampoo,, Mahasarakam, Roi-Et, Sakonnakorn, Kalasin and Mookdahan. My main concern relates to Section 17 of the Emergency Decree, which provides a specific immunity clause for law enforcement officials, by stating: “A competent official and a person having identical powers and duties as a competent official under this Emergency Decree shall not be subject to civil, criminal or disciplinary liabilities arising from the performance of functions for the termination or prevention of an illegal act provided that such act is performed in good faith, is non-discriminatory and is not unreasonable in the circumstances of exceeding the extent of necessity. This shall not preclude the right of a victim to seek compensation from a government agency under the law on liability for wrongful acts”.

While I do not wish to prejudge the accuracy of the reports received, I would like to seek from your Excellency’s Government information on the inquiries into the violent clashes and their outcomes, on the measures taken to hold those responsible for the killings accountable, and on the measures taken to prevent their recurrence.

In this respect, I would like to recall the relevant international human rights obligations that your Excellency’s Government has undertaken. 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).

I recognize that your Excellency’s Government had to take measures to restore public order. However, the adoption of any such measures have to strictly comply with the international human rights obligations which your Excellency’s Government has undertaken. In this context, the directives issued by CRES, in particular directive number 3 which mandated the armed forces “to shoot at those clearly identified as armed terrorist elements carrying war weapons, guns or grenades and aiming at security officers”, may not comply with the principles of proportionality and necessity as they apply to the use of firearms by law officials. (2006 Report to the General Assembly (A/61/311, para 33-45)

The use of force during riots has to be in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “Whenever the use of force and firearms is unavoidable, law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

Such a directive adopted by your Excellency’s Government is tantamount to a shoot-to-kill policy. Such policies serve only to displace clear legal standards with a vaguely defined license to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that are posed by the relevant threat. States have a legal duty to exercise “due diligence” in protecting the lives of individuals from attacks and this may require the use of lethal force against a suspect, but only when doing so is proportionate and strictly unavoidable to prevent the loss of life (E/CN.4/2006/53, para. 44-54). The right to life, as stipulated by the Human Rights Committee, is the supreme right from which no derogation is permitted even in times of public emergencies (General Comment No. 4/23 of 1998).

I welcome the establishment of the “National Truth and Reconciliation Commission of Thailand” which, according to reports made available to me, is not intended at finding who should be held responsible for human rights violations that occurred during the clashes but at establishing the truth into the events that occurred. In this regard, I wish to bring to the attention of your Excellency’s Government the point that whenever an arbitrary deprivation of life occurs, States are obligated to undertake a thorough, prompt and impartial investigation, to prosecute and punish the perpetrators and to ensure that adequate compensation is provided to the relatives of victims as provided in Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The Human Rights Committee has observed that failure to investigate and to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. Such failures lead to impunity which can encourage a repetition of the crimes by others in subsequent incidents. (*Para 15) General Comment No. 31 [80] the Nature of the General Legal Obligation Imposed on States Parties to the Covenant.*

International human rights law requires that in cases of serious human rights violations, such as extrajudicial executions, States are required to carry out full criminal investigations and bring perpetrators to justice. In this regard, Section 17 of the Emergency Decree, which provides a specific immunity clause for law enforcement officials, may not be compatible with international human rights standards. The views of the Human Rights Committee in the case of *Hugo v Rodriguez* are instructive where the Committee held that amnesties for gross violations of human rights are “incompatible with the obligations of the State party under the Covenant. The Committee notes with deep concern that the adoption of this law effectively excludes in a number of cases the possibility of investigation into past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses. Moreover, the Committee is concerned that in adopting this law, the State party has contributed to an atmosphere of impunity which may undermine the democratic order and give rise to further grave human rights violations. (No. 322/1988)

I therefore urge your Excellency’s Government to take all necessary steps to ensure that investigations are undertaken into the allegations of the violation of the right to life with a view to prosecuting and punishing those found responsible. I will continue to monitor

developments related to this case and I would like to request your Excellency's Government to send me any relevant documentation with regard to measures taken to ensure accountability for the killings and to prevent the recurrence of these acts.

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

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

Please provide the details and, where available, the results of any criminal investigation, prosecution and trial carried out in relation to killings committed during the period of 12 March and 20 May 2010.

With specific regard to the alleged cases of killing by security forces, please explain which authorities are competent to investigate and prosecute the members of the police and military responsible for the unlawful killings. What steps have been taken to hold those responsible for these killings, both as material perpetrators and as commanders or instigators, criminally accountable? Please also indicate how Section 17 of the Emergency Decree is being applied with regard to the investigations of police and military responsible for the killings.

Please indicate whether compensation has been or will be provided to the families of the victims.

Please indicate what broader steps, if any, are being taken to address the use of force by the security forces, including measures that are taken to comply with the rules and principles pertaining to proportionality and necessity.

Please provide information on the terms of reference of the National Truth and Reconciliation Commission of Thailand. When the findings and recommendations of the inquiry are made public, I would be grateful if your Excellency's Government could share the report with me.

Government reply dated 19 November 2010

Please allow me to begin by congratulating Mr. Heyns on your appointment as the Special Rapporteur on extrajudicial, summary or arbitrary executions. In wishing you great success in discharging your responsibilities, I take this opportunity to promote constructive engagement and dialogue with all mandate holders of Special Procedures.

In this connection, I wish to refer to the previous communications from our Permanent Mission, specifically my letter to Mr. Philip Alston dated 9 July 2010 and my Chargé d'affaires' letter to both Mr. Alston and Mr. La Rue dated 21 April 2010, regarding the incidents in Thailand during April and May of this year. It is my hope that those two letters have already provided preliminary clarifications to the questions raised in your communications to the Government of Thailand.

Further to the above-mentioned clarifications, I have the honour to forward herewith additional information on the EMERGENCY Decree on Public Administration in Emergency Situation B.E. 2548 (2005) as recently prepared by our Government. I believe that it will help to clarify a number of issues raised in your earlier letters such as 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.

I once again reaffirm our readiness to engage constructively with both of you in your capacity as the mandate holder of Special Procedures. We will keep you closely informed

of any new developments regarding your inquiries. Meanwhile, please do not hesitate to contact our Permanent Mission in case of any questions you may have.

Clarifications on the Use of Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005)

The use of the Emergency Decree in certain areas of the country

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.

However, while the overall situation has turned 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.

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 UDD's peaceful gatherings on 19 September and 10 October 2010 in Bangkok which were attended by several thousands of their supporters.

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 emphasising as its core policy the importance of the rule of law and good governance.

The allegations of the detainees under the Emergency Decree

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 been released or charged in accordance with the Criminal Procedure Code. Currently, a total of 185 persons are being held in prisons, with five 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.

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.

On detention, the Emergency the 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.

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.

On the rights of detainees, the fundamental human rights of these 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 additions, relatives of suspects and lawyers may visit the suspects.

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 also 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.

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 community radio stations and newspapers

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.

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

The Emergency Decree is a temporary, time-bound measure to address specific concerns. Each time it has been reviewed, it has been extended for limited timeframes. The maximum period that it can be used is capped at three 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.

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.

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 thereafter 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.

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.

Excessive use of force during demonstrations

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

Subject(s) of appeal: Group concern

Character of reply: Largely satisfactory responses

Observations of the Special Rapporteur The Special Rapporteur appreciates the response received from the Government of Thailand.

Allegation letted dated 16 April 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received 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.**

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.

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.

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, aged 43, who died from a bullet wound in the chest.

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.

While we do not wish to prejudge the accuracy of the reports received, with regard to the alleged blocking of websites and the signal of People's Television, we wish to reiterate 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.

Additionally, we would like to seek from your Excellency's 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.

In this respect, we would like to refer your Excellency's Government to relevant principles of international law. 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).

With regard to the alleged killings from excessive use of force by the security forces, we would like to bring to your Excellency's Government 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).

With regard to the allegation that the use of excessive force was justified we wish to bring to your Excellency's Government attention 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."

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)*)

We would like to urge your Excellency’s 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.

We also are informed that your Excellency’s 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.”

We urge your Excellency’s Government to conduct an impartial and transparent inquiry into the circumstances surrounding the killings with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the families of the victims.

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

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

Please provide the details and, where available, the results of any criminal investigation, prosecution and trial carried out in relation to killings committed.

Please indicate whether compensation has been provided to the families of the victims.

Please indicate what broader steps, if any, are being taken to address the use of force by the security forces, including measures that are taken to abide with the rules and principles pertaining to proportionality and necessity.

Please provide information on the proposal to establish a commission of inquiry. When the findings and recommendations of the inquiry are made public, we would be grateful if your Excellency's Government could share the report.

Please provide information on how the blocking of websites and the signal of the People's Television are compatible with international norms and standards of the right to freedom of opinion and expression, including article 19 of the ICCPR.

Government reply dated 19 November 2010

Please allow me to begin by congratulating Mr. Heyns on your appointment as the Special Rapporteur on extrajudicial, summary or arbitrary executions. In wishing you great success in discharging your responsibilities, I take this opportunity to promote constructive engagement and dialogue with all mandate holders of Special Procedures.

In this connection, I wish to refer to the previous communications from our Permanent Mission, specifically my letter to Mr. Philip Alston dated 9 July 2010 and my Chargé d'affaires' letter to both Mr. Alston and Mr. La Rue dated 21 April 2010, regarding the incidents in Thailand during April and May of this year. It is my hope that those two letters have already provided preliminary clarifications to the questions raised in your communications to the Government of Thailand.

Further to the above-mentioned clarifications, I have the honour to forward herewith additional information on the EMERGENCY Decree on Public Administration in Emergency Situation B.E. 2548 (2005) as recently prepared by our Government. I believe that it will help to clarify a number of issues raised in your earlier letters such as 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.

I once again reaffirm our readiness to engage constructively with both of you in your capacity as the mandate holder of Special Procedures. We will keep you closely informed of any new developments regarding your inquiries. Meanwhile, please do not hesitate to contact our Permanent Mission in case of any questions you may have.

Clarifications on the Use of Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005)

The use of the Emergency Decree in certain areas of the country

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.

However, while the overall situation has turned 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.

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 UDD's peaceful gatherings on 19

September and 10 October 2010 in Bangkok which were attended by several thousands of their supporters.

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 emphasising as its core policy the importance of the rule of law and good governance.

The allegations of the detainees under the Emergency Decree

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 been released or charged in accordance with the Criminal Procedure Code. Currently, a total of 185 persons are being held in prisons, with five 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.

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.

On detention, the Emergency the 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.

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.

On the rights of detainees, the fundamental human rights of these 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 additions, relatives of suspects and lawyers may visit the suspects.

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 also 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.

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 community radio stations and newspapers

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.

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

The Emergency Decree is a temporary, time-bound measure to address specific concerns. Each time it has been reviewed, it has been extended for limited timeframes. The maximum period that it can be used is capped at three 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.

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.

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 thereafter 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.

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.

Tunisia

Recours excessif à la force

Violation alléguée: Décès résultant d'un recours excessif à la force par des forces de l'ordre ou personnes agissant sous les instructions directes ou indirectes de l'Etat, dans les cas où le recours à la force est incompatible avec les critères de nécessité absolue et proportionnalité.

Objet de l'appel: groupe de manifestants, y compris 21 personnes

Caractère de la réponse: Pas de réponse

Observations du Rapporteur spécial

Le Rapporteur spécial regrette que le Gouvernement tunisien n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et le Conseil des droits de l'homme.

Dans un communiqué de presse en date du 14 janvier 2011, conjointement avec d'autres Rapporteurs spéciaux, le Rapporteur spécial a exhorté le Gouvernement tunisien de faire cesser le recours excessif à la force contre les manifestants pacifiques. Il a averti que l'exécution de civils innocents constitue une violation flagrante du droit international et est totalement inacceptable dans toute société. L'annonce faite par le Président selon laquelle les forces de sécurité ne doivent pas faire usage d'armes contre les manifestants est une étape importante, mais ces paroles doivent devenir une réalité, ont déclaré les experts.⁴

Appel urgent en date du 14 janvier 2011, envoyé 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 et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme.

A cet égard, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur la situation 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.**

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.

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.

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

⁴ Available at:

<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=10635&LangID=F>.

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.

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.

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.

De nombreuses personnes auraient également fait l'objet d'actes d'intimidation et de torture.

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.

Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous souhaiterions néanmoins intervenir auprès du Gouvernement de votre Excellence afin de tirer au clair les circonstances ayant provoqué les faits allégués ci-dessus et souhaiterions attirer l'attention du Gouvernement de votre Excellence sur les principes fondamentaux de droit international applicables en l'espèce.

Tout d'abord, nous souhaiterions rappeler le principe énoncé à l'article 3 de la Déclaration universelle des droits de l'Homme ainsi qu'à l'article 6 du Pacte international relatif aux droits civils et politiques, qui disposent que tout individu a le droit à la vie et à la sûreté de sa personne, que ce droit doit être protégé par la loi, et que nul ne peut être arbitrairement privé de la vie.

Concernant l'allégation d'usage excessif de la force par les forces de l'ordre, nous souhaiterions rappeler au Gouvernement de votre Excellence l'applicabilité dans de telles situations des Principes de base sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois, adoptés par le huitième Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants qui s'est tenu à La Havane (Cuba) du 27 août au 7 septembre 1990. En particulier, le principe 4 dispose que : « Les responsables de l'application des lois, dans l'accomplissement de leurs fonctions, auront recours autant que possible à des moyens non violents avant de faire usage de la force ou d'armes à feu ». Le principe 5 précise que: « Lorsque l'usage légitime de la force ou des armes à feu est inévitable, les responsables de l'application des lois: a) En useront avec modération et leur action sera proportionnelle à la gravité de l'infraction et à l'objectif légitime à atteindre; b) S'efforceront de ne causer que le minimum de dommages et d'atteintes à l'intégrité physique et de respecter et de préserver la vie humaine. » De plus, le principe 9 prévoit que les responsables de l'application des lois ne doivent pas faire usage d'armes à feu contre des personnes, sauf en cas de légitime défense ou pour défendre des tiers contre une menace imminente de mort ou de blessure grave ... et seulement lorsque des mesures moins extrêmes sont insuffisantes pour atteindre ces objectifs. Quoi qu'il en soit, ils ne recourront intentionnellement à l'usage meurtrier d'armes à feu que si cela est absolument inévitable pour protéger des vies humaines.

À cet égard, nous souhaiterions également rappeler au Gouvernement de votre Excellence que, comme prévu à l'article 21 du Pacte international relatif aux droits civils et politiques, « Le droit de réunion pacifique est reconnu. L'exercice de ce droit ne peut faire l'objet que des seules restrictions imposées conformément à la loi et qui sont nécessaires dans une société démocratique, dans l'intérêt de la sécurité nationale, de la sûreté publique, de l'ordre

public ou pour protéger la santé ou la moralité publiques, ou les droits et les libertés d'autrui.»

De plus, nous souhaiterions rappeler au Gouvernement de votre Excellence, les normes et principes fondamentaux pertinents énoncés à l'article 19 du Pacte International relatif aux droits civils et politiques, qui précise que: "Tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considérations de frontières, les informations et les idées par quelque moyen d'expression que ce soit". Quant aux allégations selon lesquelles de limiter la couverture médiatique en bloquant l'accès à internet et en fermant les comptes des cybermilitants, nous souhaiterions rappeler au Gouvernement de votre Excellence la Résolution 12/16 du Conseil des Droits de l'Homme, qui a fait appel aux états, tout en notant que le paragraphe 3 de l'article 19 du Pacte international relatif aux droits civils et politiques dispose que l'exercice du droit à la liberté d'opinion et d'expression comporte des devoirs spéciaux et des responsabilités spéciales, à ne pas imposer de restrictions incompatibles avec le paragraphe 3 de cet article, notamment à l'accès ou au recours aux techniques de l'information et de la communication, notamment la radio, la télévision et l'Internet.

Quant aux allégations selon lesquelles de nombreux manifestants ont été exécutés, nous voudrions rappeler au Gouvernement de votre Excellence la résolution 8/3 du Conseil des droits de l'homme sur le mandat Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires rappelant que "tous les états ont l'obligation de mener des enquêtes exhaustives et impartiales sur tous les cas présumés d'exécutions extrajudiciaires, sommaires ou arbitraires." Cette obligation comprend le devoir "d'adopter toutes les mesures nécessaires, notamment d'ordre législatif et judiciaire, afin de mettre un terme à l'impunité et d'empêcher la réitération de telles pratiques, comme le prévoient les Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions.

Quant aux allégations d'arrestations massives de défenseurs de droits de l'homme, nous souhaiterions également attirer l'attention du Gouvernement de votre Excellence sur les principes fondamentaux énoncés dans la Déclaration sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et de protéger les droits de l'homme et les libertés fondamentales universellement reconnus, et en particulier l'article 1 et 2 qui stipulent que « chacun a le droit, individuellement ou en association avec d'autres, de promouvoir la protection et la réalisation des droits de l'homme et des libertés fondamentales aux niveaux national et international » et que « chaque État a, au premier chef, la responsabilité et le devoir de protéger, promouvoir et rendre effectifs tous les droits de l'homme et toutes les libertés fondamentales, notamment en adoptant les mesures nécessaires pour instaurer les conditions sociales, économiques, politiques et autres ainsi que les garanties juridiques voulues pour que toutes les personnes relevant de sa juridiction puissent, individuellement ou en association avec d'autres, jouir en pratique de tous ces droits et de toutes ces libertés ».

De même, nous souhaiterions attirer l'attention du Gouvernement de votre Excellence sur les dispositions suivantes en particulier sur les articles suivants :

-l'article 5, a), selon lequel, afin de promouvoir et protéger les droits de l'homme et les libertés fondamentales, chacun a le droit, individuellement ou en association avec d'autres, aux niveaux national et international de se réunir et de se rassembler pacifiquement;

-l'article 6, alinéas b) et c), qui stipule que chacun a le droit, individuellement ou en association avec d'autres, conformément aux instruments internationaux relatifs aux droits de l'homme et autres instruments internationaux applicables, de publier, communiquer à autrui ou diffuser librement des idées, informations et connaissances sur tous les droits de

l'homme et toutes les libertés fondamentales; d'étudier, discuter, apprécier et évaluer le respect, tant en droit qu'en pratique, de tous les droits de l'homme et de toutes les libertés fondamentales et, par ces moyens et autres moyens appropriés, d'appeler l'attention du public sur la question ; et

-l'article 12, para. 2 et 3, qui stipule que l'État prend toutes les mesures nécessaires pour assurer que les autorités compétentes protègent toute personne, individuellement ou en association avec d'autres, de toute violence, menace, représailles, discrimination de facto ou de jure, pression ou autre action arbitraire dans le cadre de l'exercice légitime des droits visés dans la présente Déclaration. À cet égard, chacun a le droit, individuellement ou en association avec d'autres, d'être efficacement protégé par la législation nationale quand il réagit par des moyens pacifiques contre des activités et actes, y compris ceux résultant d'omissions, imputables à l'État et ayant entraîné des violations des droits de l'homme et des libertés fondamentales, ainsi que contre des actes de violence perpétrés par des groupes ou individus qui entravent l'exercice des droits de l'homme et des libertés fondamentales.

Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis ni sur le caractère arbitraire ou non de la détention, nous faisons appel au Gouvernement de votre Excellence afin que les droits des personnes mentionnées soient respectés et qu'elles ne soient pas privées arbitrairement de leur liberté et d'un procès équitable. Ces droits sont protégés par les articles 9 et 10 de la Déclaration universelle des droits de l'homme, (ainsi que les articles 9 et 14 du Pacte international relatif aux droits civils et politiques).

Des craintes ont été exprimées quant au fait que les personnes mentionnées précédemment puissent être l'objet de torture ou de cruels et mauvais traitements. À cet égard, nous souhaiterions intervenir auprès du Gouvernement de votre Excellence pour tirer au clair les circonstances ayant provoqué les allégations ci-dessus, afin que soit protégée et respectée l'intégrité physique et mentale des personnes précitées et ce, conformément aux dispositions pertinentes de la Déclaration universelle des droits de l'homme, du Pacte international relatif aux droits civils et politiques, de la Déclaration sur la protection de toutes les personnes contre la torture et autres peines ou traitements cruels, inhumains ou dégradants et de la Convention contre la Torture.

Au vu de l'urgence du cas, nous saurions gré au Gouvernement de votre Excellence de nous fournir une réponse sur les démarches préliminaires entreprises afin de protéger les droits des personnes ci-dessus mentionnées.

Dans le cas où vos enquêtes appuient ou suggèrent l'exactitude des allégations susmentionnées, nous prions le Gouvernement de votre Excellence de prendre toutes les mesures nécessaires afin d'assurer le respect des droits et des libertés des individus susmentionnés, de diligenter des enquêtes sur les violations perpétrées et de traduire les responsables en justice. Nous prions également le Gouvernement de votre Excellence d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés. À cet égard, nous continuerons de suivre la situation avec une attention particulière.

En outre, il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par le Conseil des droits de l'homme, de solliciter votre coopération afin de tirer au clair les cas qui ont été portés à notre attention. Étant dans l'obligation de rendre compte de ces cas au Conseil des droits de l'homme, nous serions reconnaissants au Gouvernement de votre Excellence de bien vouloir nous transmettre ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?
2. Quelles sont les branches des forces de sécurité impliquées dans ces événements? Quels ordres ou instructions ont-elles reçu, notamment, quant à l'usage de la force ?

3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits allégués.

4. Si les allégations sont avérées, veuillez fournir toute information sur toute poursuite et/ou procédure engagée contre les auteurs ou responsables de ces violations.

Turkmenistan

Alleged assassination plot of Mr. Farid Tukhbatullin, a human rights defender

Violation alleged: Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures.

Subject(s) of appeal: 1 Male (Human Rights Defender)

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 1 November 2010, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received 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.

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.

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 television channel K+ on 28 and 29 September 2010.

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.

It is 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.

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.

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.

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.

Concern is 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 is also expressed for the physical and psychological integrity of Mr. Farid Tukhbatullin and his family.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

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

- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

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

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de

facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In 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.

As the alleged assassination plot may be linked to a recent interview given by Mr. Tukhbatullin concerning the TIHR's assessment of the human rights situation in Turkmenistan, we would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would also like to draw the attention of your Excellency's Government to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Principle 4 provides that "effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

We urge your Excellency's Government to take all necessary measures to guarantee that Mr. Tukhbatullin is not subjected to any form of violence, threats, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action as a consequence of his legitimate exercise of his rights, in particular that of freedom of expression, and that in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

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

Please, be informed that a communication regarding this case has also been sent to the Government of Austria since the alleged victim resides in Austrian territory.

Uganda

Killing of an LGBT defender- David Kato

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State.

Subject(s) of appeal: 1 Male (Human Rights Defender)

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 1 February 2011, sent with the Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to bring to your Excellency's Government's attention information we have received 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.

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.

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.

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.

While we do not wish to prejudge the accuracy of these allegations, we wish to recall the fundamental principle set forth in article 6(1) of the International Covenant in Civil and Political Rights (ICCPR), acceded to by Uganda on 21 June 1995, according to which "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life", as well as the Government's obligation to "respect and to ensure" the rights expressed in the ICCPR (article 2(1)).

In respect of the numerous death threats Mr. Kato had received, we wish to stress that, "Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those

who receive death threats” (Paragraph 4, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

We further wish to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms of 1998, 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 national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

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

- article 7 which states that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance."

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

We also wish to refer your Excellency’s Government to the “obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ...to grant adequate compensation within reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions” (Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, paragraph 4

We urge your Excellency’s Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts.

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

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

Had a complaint been lodged by or on behalf of the alleged victim?

Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

Please indicate what measures of protection had been taken to protect the life of Mr. Kato.

United States of America

Imminent execution of Mr. Landrigan

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: 1 Male

Character of reply: Receipt acknowledged

Observations of the Special Rapporteur

The Special Rapporteur regrets that Mr. Landrigan was executed despite his request to put Mr. Landrigan's execution on hold in light of the concerns raised in the communication.

Urgent appeal dated 25 October 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. **Jeffrey Landrigan**, who is reportedly scheduled to be executed in Arizona at 10.00 a.m. on 26 October 2010. Mr. Landrigan was sentenced to death in 1990 for the 1989 murder of Chester Dyer.

According to the information received

After Mr. Landrigan was charged with the murder of Chester Dyer, he could not afford a lawyer at trial, so the court appointed one to represent him, reportedly an attorney who had never worked on a death penalty case before. Jeffrey Landrigan rejected the prosecutor's offer of a 20-year prison term in return for a guilty plea to second-degree murder and the jury convicted him of first-degree murder. According to the information I have, for the sentencing phase of the 1990 trial, the defence lawyer had prepared only two witnesses to testify. One was Jeffrey Landrigan's biological mother (who had abandoned him when he was six months old) and the other was his former wife. However, Jeffrey Landrigan refused to allow either to testify. The judge sentenced him to death, although she found that he had not acted with premeditation.

It has been brought to my attention that during the trial the lawyer had not presented, or sought to present, any expert testimony on Jeffrey Landrigan's background. In 1998, a neuropsychologist had concluded that a combination of inherited factors, prenatal exposure to drugs and alcohol, early parental rejection and troubled relationships with his adoptive family had "severely impaired" Jeffrey Landrigan's ability to function in society. It is also reported that, in 1999, a federal District Court judge refused to hold an evidentiary hearing into the claim that the trial lawyer had been constitutionally ineffective by failing to investigate and present mitigating evidence of Jeffrey Landrigan's background of deprivation and abuse. In 2005, by nine votes to two, the US Court of Appeals for the Ninth Circuit concluded that the District Judge had abused her discretion by denying such a hearing. The majority reportedly concluded that there was a reasonable probability that if the trial judge had heard the mitigating evidence that had been presented on appeal she would not have passed a death sentence (which the trial judge has herself since said). Even the two judges who voted against ordering the District Court to hold an evidentiary hearing reportedly agreed that the trial lawyer's preparation for the sentencing "fell below"

professional standards. However, in 2007, by five votes to four, the US Supreme Court overturned the Ninth Circuit's ruling, on the grounds that Jeffrey Landrigan would not have allowed his lawyer to present any mitigating evidence that he might have uncovered. The four dissenting justices reportedly accused their colleagues of "pure guesswork".

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR), to which the United States of America is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". Intrinsic to the most serious crime requirement, is the concept of personal culpability: a state may only impose the death penalty when it can show, at a minimum, that the particular defendant committed an intentional act of violence that resulted in the death of another person. The personal culpability requirement is reflected in the jurisprudence of the Supreme Court of the United States. In 2002, the Supreme Court held in *Atkins v. Virginia* (536 U.S. 304 (2002)) that the death penalty could not be imposed on those with mental retardation because this class of people were significantly less culpable than people without functional impairment.

Furthermore, I would like to draw your Excellency's Government attention to the Human Rights Committee's recognition that a death sentence should not be imposed on an individual who is mentally incapacitated at the time the warrant for execution is issued. Otherwise, the State party to the ICCPR violates his rights not to be subjected to torture, inhuman or to cruel, inhuman or degrading treatment or punishment (article 7)⁵. Furthermore, the carrying out of the death penalty on a mentally incapacitated person could constitute arbitrary deprivation of life. In this respect, the Safeguards Guaranteeing Protection of those Facing the Death Penalty, approved by ECOSOC in 1984, prohibit the carrying out of the death penalty on persons "who have become insane". The UN Commission on Human Rights has also repeatedly called upon States not to impose the death penalty on a mentally disabled person. In this connection, I would like to refer your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life. It is generally accepted that the execution of an individual who is mentally challenged is not compatible with the prohibition of arbitrariness under these provisions.

In addition, it is generally recognized in international law that the death penalty may only be imposed after a trial and appeal proceedings that scrupulously respect all the principles of due process as established under article 14 of the International Covenant on Civil and Political Rights. Otherwise, its imposition will amount to an arbitrary deprivation of life by the State. The scrupulous respect of the due process guarantees includes adequate legal representation, which is especially important in death penalty cases where any mistake or failure can mean the difference between life and death. The failure to present and recognize possible mitigating evidence in a death penalty case puts a huge question mark in the regularity of the due process followed in the case of Mr. Landrigan. This is more so noting that the trial judge herself has reportedly said that she would not have passed a death sentence if she had heard the mitigating evidence that was presented on appeal.

5 R.S. v Trinidad and Tobago, Communication 684/1996, Views adopted on 2 April 2002.

In this connection, I am particularly concerned about the fact that Mr. Landrigan's trial lawyer failed to investigate and present mitigating evidence on his behalf as well as that, since 2005, 13 federal judges have argued that there should be a federal evidentiary hearing into the claim that his legal representation was constitutionally deficient and that this may have altered the outcome of the trial.

In light of these serious considerations and pressing concerns, based upon human rights norms recognized by the international community, I would respectfully request Your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. I urge your Excellency's Government to put Mr. Landrigan's execution on hold in light of the above facts with a view to commuting his death sentence.

In closing, let me stress that I receive a significant number of complaints in relation to the carrying out of the death sentence in the United States. However, while my intention is not to act in all such cases, I intend to do so when there are reasons to believe that there is risk of injustice which could cause a violation of international standards in the absence of urgent intervention by the Government.

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

Government reply dated 26 October 2010

Thank you for your letter dated October 25, 2010 regarding the pending execution of Mr. Jeffrey Landrigan who was convicted of murder of Chester Dyer. In your letter, you requested an expeditious response by the United States Government.

We forwarded your letter via facsimile on October 25, 2010 to Governor Jan Brewer and Attorney General Terry Goddard of the State of Arizona for their consideration, informing them of your urgent appeal regarding Mr. Landrigan. The office of the Governor of Arizona has also agreed to forward to the Presiding Officer of the Arizona Board of Executive Clemency.

The United States of America remains committed to the promotion and protection of human rights. We look forward to working with you in future.

Alleged targeted killing of Mr al-Awlaki

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State.

Subject(s) of appeal: 1 Male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 29 July 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary execution.

In this connection, I would like to bring to your Excellency's Government's attention information I have received regarding your Excellency's Government's alleged decision to

target Mr. Anwar al-Awlaki, a citizen of the United States of America reportedly residing in Yemen, for killing by your Government's officials and/or agents.

According to the information received

Mr. Anwar al-Awlaki is a 39 year-old American citizen born in New Mexico in 1971 to Yemeni parents. He lived in the United States until he was seven years old, when the family returned to Yemen and his father became the country's minister of agriculture. Mr. al-Awlaki spent his secondary education years in Yemen with his family, and returned to the United States for undergraduate and graduate education. He studied civil engineering at Colorado State University, receiving his Bachelor of Science degree. However, at some point not long after completing his undergraduate education, he opted out of a career in engineering and became a part-time Imam at the Islamic Center of Fort Collins, Colorado. After marrying a woman from Yemen in 1994, Mr. al-Awlaki studied education at San Diego State University, graduating with a Masters of Arts degree in Special Education. In 2004, he reportedly moved back to Yemen with his wife and two young children for economic reasons, to study and preach there, and be closer to his parents.

Mr. al-Awlaki was arrested and imprisoned by the Yemeni authorities for 18 months from 2006-2007 at the request of the United States Government after he sought to mediate a tribal dispute. During his imprisonment, he was reportedly repeatedly questioned by FBI agents. As subsequently reportedly admitted by United States Government officials, John Negroponte, then Director of national intelligence, told Yemeni authorities that the United States did not object to Mr. al-Awlaki's continued detention. At the end of 2007 United States officials reportedly conveyed to the Government of Yemen that the United States no longer insisted on Mr. al-Awlaki's continued imprisonment, and he was released.

It has also been alleged that the FBI's first acknowledged interest in Mr. al-Awlaki was in 1999, but there was no evidence that he preached or harbored radical or anti-American views then or in prior years. People active in the small mosque in Colorado at which Mr. al-Awlaki occasionally preached while studying at Fort Collins for his undergraduate degree from 1988 through 1992 reportedly attested specifically to this fact, and added that the community would not have been receptive of an imam who expressed anti-American sentiments. Similarly, when he was later preaching at a mosque in San Diego, neighbors reportedly did not hear any hostility toward non-Muslims or any resentment regarding US policies. Mr. al-Awlaki had begun recording his sermons on CD and selling them as boxed sets beginning in 2000,⁶ and these CD recordings have reportedly been found to be free of radical statements.

The FBI has reportedly stated that it first took an interest in Mr. al-Awlaki when he served as vice-president of a small Islamic charity that an FBI agent subsequently opined might be "a front organization that funneled money to terrorists." It does not appear that any such link was ever established and no allegation was made regarding any role that Mr. al-Awlaki might have had in any such financing operation.

FBI agents who interviewed Mr. al-Awlaki at least four times in the wake of the attacks of 11 September 2001 reportedly found only that he had "random contacts" with several radical Muslim men, which the FBI agents attributed to "the inevitable consequence of living in the small world of Islam in the United States."⁷ Mr. al-Awlaki's statements after the attacks reportedly expressed outrage at the broad net cast over the country to round up men from ages 15 on of Arab descent and/or of the Muslim faith, to be detained without

6 Eric Schmitt and Eric Lipton, "Focus on Internet Imams as Al Qaeda Recruiters," New York Times, Jan. 1, 2010, available at <http://www.nytimes.com/2010/01/01/us/01imam.html>.

7 Id.

charge under abusive conditions to facilitate interrogation. Mr. al-Awlaki, however, was frequently quoted as disapproving of the use of violence and was seen by Government officials as a moderate who might be able to help bridge the gap between Islam and western democracies.

Similarly it is alleged that initial claims that Mr. al-Awlaki had a relationship with Major Nidal Malik Hassan, the Army psychiatrist charged with killing 13 people in Fort Hood, Texas, and might have collaborated with him in some fashion were reportedly abandoned after an initial investigation. Emails initially characterized as “exchanges” between the two men⁸ were revealed to be 21 emails with questions about Islam sent by Major Hassan to Mr. al-Awlaki and 2 emails sent by Mr. al-Awlaki in return,⁹ none of which expressed any militant positions or plans. None of these emails were reportedly deemed by a defense investigator to show any sign of a terrorist threat. The terrorism task force investigator assigned to assess the email communications concluded that “the email messages were consistent with Major Hassan’s research efforts, did not suggest violence and did not justify further inquiry.”¹⁰ The most troubling item that reportedly could be attributed by the Government to Mr. al-Awlaki in his brief emails responding to Major Hassan’s questions was his statement that a Muslim soldier should not follow orders to kill other Muslims.¹¹

According to information received, Mr. al-Awlaki has not claimed to be a member of Al Qaeda. The Treasury Department of the United States Government has designated Mr. al-Awlaki a “specially designated global terrorist” and has frozen his assets, allegedly for “supporting acts of terrorism and for acting for or on behalf of” Al Qaeda in the Arabian Peninsula, but the Government has not criminally indicted him.

Mr. al-Awlaki has reportedly been targeted for killing by the CIA with the approval of the National Security Council and the Executive branch of the United States government. On 17 September 2001, then President George W. Bush reportedly signed a “Presidential Finding” authorizing the CIA to develop a program for “high-value targets” for whom “kill, capture or detain” orders could be issued in consultation with the Justice Department, the CIA, and the White House. Mr. al-Awlaki was reportedly included on a list of individuals designated for targeted killing in or around early 2010.

I have previously addressed in significant detail the key legal issues that arise with your Excellency’s Government’s reported policy of targeted killing, including most recently in my annual report to the Human Rights Council, A/HRC/14/24/Add.6. I would be grateful for your comments concerning the allegation that Mr. al-Awlaki has been targeted for killing pursuant to that policy in light of the issues I have raised.

Specifically:

1. Are the facts and allegations above accurate? In particular, has your Excellency’s Government determined to target Mr. al-Awlaki for killing?
2. What rules of international law does your Excellency’s Government consider to govern its determination that Mr. al-Awlaki may be killed? What is the basis for a determination to kill rather than capture Mr. al-Awlaki?

8 Scott Shane and David Johnston, “Questions, Not Alarms, Met Exchanges With Cleric,” New York Times, Nov. 12, 2009, available at <http://www.nytimes.com/2009/11/12/us/12inquire.html>.

9 Eric Schmitt and Eric Lipton, “Focus on Internet Imams as Al Qaeda Recruiters,” New York Times, Jan. 1, 2010, available at <http://www.nytimes.com/2010/01/01/us/01imam.html>.

10 Id.

11 Scott Shane, “Born in U.S., a Radical Cleric Inspires Terror,” New York Times, Nov. 19, 2009, available at <http://www.nytimes.com/2009/11/19/us/awlaki.html>.

(a) If your Excellency's Government considers its determination to be governed by international humanitarian law, please clarify which treaty instruments or customary norms are considered to apply. In particular, please clarify the basis for determination that international humanitarian law would apply, and the basis for determination that Mr. al-Awlaki may be targeted and killed, including whether, and on what legal basis, your Excellency's Government considers Mr. al-Awlaki to be a combatant or a civilian directly participating in hostilities.

(b) If your Excellency's Government considers its determination to be governed by the law applicable to the use of inter-state force and the international law doctrine of self-defense, please clarify the basis for such a determination, and whether self-defense is invoked in addition or as an alternate to international humanitarian law and international human rights law.

3. What procedural safeguards, if any, are employed to ensure that the determination to target Mr. al-Awlaki complies with international law?

4. Does the Government of Yemen agree with the basis for any determination that the targeted killing of Mr. al-Awlaki in its territory is lawful?

In light of the content of the communication, a copy will be shared for information with the Government of the Republic of Yemen through its Permanent Mission to the United Nations Office at Geneva.

Follow-up on Killing of five police officers by the Afghan Special Guards

Violation alleged: Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State.

Subject(s) of appeal: 6 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 12 July 2010, sent with the Chairperson-Rapporteur of the Working Group on the Use of Mercenaries.

By a letter dated 17 July 2009, we brought to your Excellency's Government's attention information we had received concerning reports of a shooting incident that occurred on 29 June 2009 between armed Afghan Special Guards (also referred to by the local population as "Afghan Special Forces") and Afghan National Police (ANP) inside the Attorney General's office in Kandahar, Afghanistan.

In your reply dated 23 April 2010, you indicate that all questions related to this incident should be referred to the Government of Afghanistan.

The Special Rapporteur on extrajudicial executions noted in his annual communications report, submitted to the Human Rights Council, that he regrets that your Excellency's Government's letter did not respond to the questions asked but rather referred all questions to the Government of Afghanistan. He noted that your reply failed to address the crux of the communication, which seeks information about the connection, if any, between the Afghan Special Guards involved in the shooting of the six Afghan National Police officers and any U.S. force, agency or organization (A/HRC14/24.Add1).

While the primary responsibility to investigate the incident and prosecute those responsible rests with the Government of Afghanistan, and while we are waiting for a response from the Afghan Government on this issue, we would be grateful if you could clarify the precise identity and chain of command regarding the Afghan Special Guards. As indicated in our initial communication, the information we received indicated that Afghan Special Guards are an Afghan private entity operating as a security company working under the authority of the American Special Forces in Afghanistan.

In this regard, we would like to recall the views of the Human Rights Committee expressed in its annual report A/58/40 (Vol. II, para. 7.2 and pp. 357) of 1 November 2003 which concluded that “the contracting out to the private commercial sector of core State activities which involve the use of force and the detention of persons does not absolve a State party of its obligations under the Covenant”.

In addition, in accordance with its obligations under the International Covenant on Civil and Political Rights, articles 2 and 6.1, the U.S. Government is obliged to both respect and to ensure the right to life. This means that it must also adopt the necessary legislative, judicial, administrative, educative and other measures to guarantee that the right to life is respected within its territory or areas under its control, as stated by the Human Rights Committee, in its General Comment No. 31. The U.S. Government is therefore required to protect people from abusive use of force carried out by privately formed groups.

We would therefore appreciate if your Excellency’s Government’s could provide detailed information on the following questions:

Are the facts alleged in the summary of the case, sent to your Excellency’s Government on 17 July 2009, accurate including regarding the individuals and institutions involved?

If the Afghan Special Guards involved in the shooting have worked for or with any U.S. force, agency, or organization, please provide details on this relationship and on the Afghan Special Guards. Please provide information on the Afghan Special Guards’ command and control structure, and which, if any, U.S. force, agency or organization it works with or reports to.

Please indicate whether the Afghan Special Guards is a private military and security company registered in accordance with the Afghan procedure for regulating the activities of private security companies in Afghanistan. Please also specify whether it operates under contract with the U.S. Government. If it does, please detail the contractual modalities between the private security company and the U.S. government, and in particular the oversight and vetting mechanisms stipulated in the contract, as well as a copy of the contract.

Please provide the details, and where available the results, of any investigation which may have been carried out in relation to this event.

Any additional information which your Excellency’s Government wishes to share with us in this regard would be much welcome.

Killing of a 14 year old on the border of El Paso

Violation alleged: Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality.

Subject(s) of appeal: 1 Male

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 22 June 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the killing of a Mexican citizen at the US-Mexico border near El Paso, Texas and Ciudad Juarez, Mexico.

According to information received, 14-year-old **Mr. Sergio Adrián Hernández** Güereca died after being shot in the head on the border of El Paso, Texas and Ciudad Juarez, Mexico by United States Custom and Border Protection agents on 7 June 2010. According to information provided to me, the incident occurred shortly after Mexican migrants threw rocks from the Mexican side of the border, after United States Custom and Border Protection agents arrested two individuals from the migrant group on the US side of the border.

According to further information I have received, the numbers of incidents where Mexicans have been killed or wounded by border patrol agents has steadily increased in the past three years: five (5) Mexicans were killed or wounded in 2008; twelve (12) were killed or wounded in 2009; and seventeen (17) have been either killed or wounded in 2010.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Excellency's Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (Article 6). In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish the deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities." Intentional lethal force is only lawful where it is strictly unavoidable, and necessary to protect life (Article 6, ICCPR; Principle 9, the Basic Principles on the Use of Firearms by Law Enforcement Officials). The crossing of a national border – whether unlawful or not – of itself does not justify an intentional lethal shooting.

The prohibition on the arbitrary deprivation of the right to life applies to all persons, regardless of citizenship. Article 2 of the ICCPR requires that states "respect and [...] ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

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

I urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the Mr. Hernández Güereca's death with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings, as well as to compensate the family of the victim.

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

Are the facts alleged in the above summary of the case accurate? If so, on what basis did the border agent fatally shoot Mr. Hernández Güereca? Please explain whether the shooting was in compliance with the international law on the use of force.

Please provide the details, and where available the results, of any security force investigation, and judicial or other inquiries carried out in relation to the shooting of Mr. Hernández Güereca at the US-Mexico border.

Please provide the full details of any disciplinary action and prosecution undertaken with regard to the security officers found responsible.

Please indicate whether compensation has been or will be provided to the family of the victim.

Killings during a raid

Violation alleged: Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law

Subject(s) of appeal: 3 females and 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 30 April 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding **a number of deaths which occurred during an international and Afghan security force raid in Afghanistan in February 2010, and the subsequent investigations into these deaths.**

Three Afghan women were killed on 12 February 2010 during an international and Afghan security force night-time raid on a house in a village near Gardez, in the Paktia Province of Afghanistan. Two men – Mohammed Daoud and Mohammed Zahir, both sons of the owner of the house, Hajji Sharaf Udin, were also killed. The women are believed to have been Mr. Udin's 19 year old granddaughter, Gulalai; his daughter, Saleha; and his daughter-in-law, Shirin. Saleha, aged 37 with 10 children, and Shirin, aged 22 with 6 children, were both pregnant. There were reportedly over 25 guests at the house that evening, where the family was celebrating the naming of a newborn child. The composition of the international-Afghan force has not been made clear by the International Security Assistance Force (ISAF), but information I have received suggests that the international component was American Special Operations forces.

According to the information received

On 12 February 2010, (ISAF, the military force led by North Atlantic Treaty Organization (NATO)), released a statement that an international-Afghan security force, after it conducted a military raid and then a search on a home, had “found” the bound and gagged bodies of three women, adding that the women had been “tied up, gagged and killed” and “hidden in an adjacent room”. ISAF announced then that a joint forensic investigation would be conducted.

On 13 March 2010, The Times (United Kingdom) newspaper reported allegations that NATO had covered-up the responsibility of the international-Afghan forces for the deaths of the three women.

On 13 March 2010, ISAF released a statement refuting the allegations that there had been a cover-up, and explaining that the investigation launched on 12 February 2010 had taken several weeks to conduct. ISAF announced that it regretted its earlier press statement that the women had been “tied up, gagged and killed”. ISAF stated that this statement came from “initial operational reports” and that “Based on subsequent reviews, those reports were based on a lack of understanding of local burial practices. The women’s feet had been tied, and they had cloth straps that immobilized their jaws, evidently in preparation for burial.”

On 15 March 2010, Rear Admiral Greg Smith, General McChrystal’s deputy chief of staff for communications for ISAF, was reported as stating that the bodies of the three women showed signs of puncture and slashing wounds from a knife, and that they appeared to have died several hours before the arrival of the joint force.

On 4 April 2010, ISAF released a statement on the joint investigation into the events. It stated that international-Afghan forces were responsible for the deaths of the three women. It stated that “while investigators could not conclusively determine how or when the women died, due to lack of forensic evidence, they concluded that the women were accidentally killed as a result of the joint force firing at the men.” ISAF explained that the investigation also reviewed the information released by ISAF Joint Command, ISAF and the Afghan Ministry of Interior, and found the releases issued shortly after the operation reporting that the women had been bound, gagged and killed, were based on a “lack of cultural understanding by the joint force and the chain of command”. The statement also acknowledged that the men who had been shot were in fact civilians, but stated that they “were shot and killed by the joint patrol after they showed what appeared to be hostile intent by being armed.”

According to the information I have received, the investigation carried out by criminal investigation division of the Afghan Ministry of the Interior, which formed part of the joint investigation, has not yet been released. However, Afghan officials who investigated the deaths allegedly reported to NATO/ISAF staff at a briefing in late March 2010 their belief that troops tampered with evidence at the scene. Mr. Merza Mohammed Yarmand, Director of the Ministry of Interior’s criminal investigation division, and who worked on the case, has reportedly stated that their investigation concluded that “the NATO patrol was responsible for the killing of the two men and the three women, and that there was evidence of tampering in the corridor outside the compound by the members” of the forces that conducted the raid. According to the widely reported statements of family members of the victims, American forces attempted to cover up their responsibility for the killings by removing the bullets from the victims’ bodies and cleaning the bullet wounds with alcohol. According to this information, there were additional indications that the evidence at the scene had been tampered with, including bullets removed from the walls near where the women were killed.

According to reports, after receiving a briefing from Afghan officials in late March 2010 as to the findings of their investigation, General McChrystal ordered a review to see why your Excellency's Government and Afghanistan accounts differed. The results of this review do not appear to have yet been made public.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer your Excellency's Government to the relevant principles of international law. Under the applicable law of armed conflict, any use of force must meet the requirements of necessity, proportionality, and distinction. Under Article 48 of Protocol I Additional to the Geneva Conventions of 1977, "Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives." Under customary international humanitarian law as set out in the 2005 International Committee of the Red Cross study, legitimate military objectives may include combatants and civilians taking a direct part in hostilities (*Customary International Humanitarian Law*, ICRC, Rules 1, 6, hereafter ICRC Study). States party to the conflict must "do everything feasible to verify that targets are military objectives" (ICRC study, Rule 16). When carrying out an attack, "constant care" and "[a]ll feasible precautions" must be taken "to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects" (ICRC Study, Rule 15).

Importantly, States are obliged under international law to investigate alleged unlawful killings and to prosecute their perpetrators. This includes an obligation to investigate and punish violations of the right to life in situations of armed conflict. Regardless of the circumstances, investigations must always be conducted as effectively as possible and never be reduced to mere formality. Instructive in this regard is the Inter-American Court of Human Rights decision of *Velásquez Rodríguez Case*, which held that "The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." (Judgment of July 29, 1988, paragraph 177)

I urge your Excellency's Government to conduct an impartial and transparent inquiry into the circumstances surrounding the deaths of the three women, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of unlawful killings. Investigations should especially focus on whether the deaths were covered up in any way, and bring to account any person involved in tampering with evidence.

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

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

Please indicate the composition of the international and Afghan forces who undertook the raid, including nationality and chains of command.

Please provide the details, and where available the results, of any U.S. investigation, and judicial or other inquiries carried out in relation to the deaths described above.

Please respond to allegations that security forces attempted to conceal the cause of death of the three women by tampering with evidence and providing false statements concerning the

events leading to the deaths. If these allegations are true, please provide the details of any investigation or disciplinary measures taken against the responsible members of the security forces.

Please indicate whether compensation or other payments have been provided by your Excellency's Government to the families of the victims.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration. Finally, I would like to inform your Excellency's Government that I have addressed a communication relating to this communication to the International Security Assistance Force and the North Atlantic Treaty Organization, respectively.

Venezuela

Riñas entre prisioneros

Violación alegada: Otra (omisiones del personal penitenciario para el control de la violencia entre los internos)

Persona objeto del llamamiento: grupos prisioneros

Carácter de la respuesta: Cooperativa pero respuesta incompleta

Observaciones del Relator Especial

El Relator Especial agradece la respuesta transmitida por parte del Gobierno pero reitera su preocupación sobre los hechos mencionados en la carta de alegaciones, y sobre la situación en general en las cárceles en Venezuela. El Relator Especial aprovecha esta oportunidad para recordar al Gobierno de sus obligaciones internacionales y garantizar los derechos humanos para todos, incluso los que se encuentran en una situación de encarcelamiento.

Carta de Alegaciones con fecha 23 de noviembre de 2010, enviada junto con el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de Su Excelencia información que hemos recibido en relación con la situación siguiente.

Según información recibida, En el Centro Penitenciario de la Región Centro Occidental de Venezuela, se organizarían riñas entre prisioneros conocidas como el "Coliseo." Estas riñas, programadas para "arreglar cuentas" entre los prisioneros serían organizadas y dirigidas por los jefes de las organizaciones criminales que controlan la prisión.

Estos combates además tendrían lugar en presencia de los funcionarios encargados de hacer cumplir la ley en la cárcel. Se nos informó que en los "códigos" establecidos por los reclusos y los organizadores, los participantes podrían utilizar armas blancas y podrían herir a sus oponentes en ciertas zonas del cuerpo. Desde enero hasta noviembre de 2010, habrían muerto cuatro presos y más de 113 habrían resultado heridos en los combates antes mencionados.

Durante el presente año, en las cárceles venezolanas se habría producido un aumento del 25% de muertes (352), mientras que las lesiones habrían aumentado en un 31% (736) en relación a las cifras del 2009.

Sin implicar, de antemano, una conclusión sobre los hechos o el fondo del asunto, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos (PIDCP), que Venezuela ha ratificado el 10 de mayo de 1978. Los artículos 3 y 6 de estos instrumentos respectivamente garantizan a

todo individuo los derechos a la vida y a la seguridad de su persona y disponen que estos derechos sean protegidos por la ley y que nadie sea arbitrariamente privado de su vida.

En este contexto, también quisiéramos recordar la Observación General 31 al PIDCP del Comité de Derechos Humanos que establece, en el párrafo 8, que “sólo se podrán cumplir plenamente las obligaciones positivas de los Estados Parte de garantizar los derechos reconocidos en el Pacto si el Estado protege a las personas, no sólo contra las violaciones de los derechos reconocidos en el Pacto que cometan sus agentes, sino también contra los actos que cometan particulares o entidades”, y que “puede haber circunstancias en las que, por no haberse garantizado los derechos reconocidos en el Pacto como se dispone en el artículo 2, los Estados Parte infrinjan estos derechos permitiendo que particulares o entidades cometan tales actos o no adoptando las medidas apropiadas o no ejerciendo el cuidado debido para prevenir, castigar, investigar o reparar el daño así causado”.

En particular, como la Relatoría sobre las ejecuciones extrajudiciales, sumarias o arbitrarias ya ha podido señalar (A/61/311, para. 51), en lo que hace a la prevención de la muerte de personas detenidas, los Estados tienen una mayor responsabilidad sobre éstas. En todos los casos los Estados deben abstenerse de cometer actos que violan los derechos individuales y adoptar las correspondientes medidas para prevenir los abusos de los derechos humanos por parte de particulares. [...] Además, el grado de diligencia debida que el Estado tiene que ejercer normalmente es considerablemente más elevado en el contexto de detención.

Finalmente, como ha sido reiterado por el Consejo de Derechos Humanos en su Resolución 8/3 sobre ejecuciones extrajudiciales, sumarias o arbitrarias, todos los Estados tienen “la obligación ...de llevar a cabo investigaciones completas e imparciales en todos los casos en que se sospeche que ha habido ejecuciones extrajudiciales, sumarias o arbitrarias, de identificar y enjuiciar a los responsables... y de adoptar todas las medidas que sean necesarias, incluidas medidas jurídicas y judiciales, para poner término a la impunidad e impedir que se repitan esas ejecuciones, como se señala en los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias.” En particular, el principio 9 prevé que los gobiernos conduzcan “una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias”.

Quisiéramos también hacer un llamamiento al Gobierno de Su Excelencia para buscar una clarificación de los hechos para asegurar que el derecho a la integridad física y mental de las personas mencionadas arriba sean protegidos de conformidad, entre otros, a la Declaración Universal de los Derechos Humanos, el Pacto Internacional de Derechos Civiles y Políticos, la Declaración sobre la Protección de todas las Personas contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes y la Convención contra la Tortura.

En este contexto, nos gustaría llamar la atención del Gobierno de Su Excelencia al párrafo 1 de la Resolución del Consejo de Derechos Humanos 8/8, la cual “Condena todas las formas de tortura y otros tratos o penas crueles, inhumanos o degradantes, que están y seguirán estando prohibidos en todo momento y en todo lugar y que, por lo tanto, no pueden justificarse nunca, y exhorta a todos los gobiernos a que respeten plenamente la prohibición de la tortura y otros tratos o penas crueles, inhumanos o degradantes.”

Quisiéramos hacer referencia a la recomendación del antiguo Relator Especial sobre la Tortura, la cual señala que “Los países deberían adoptar medidas eficaces para impedir la violencia entre los presos investigando los informes de este tipo de violencia, encausando y sancionando a los responsables y ofreciendo protección a las personas vulnerables sin marginarlas de la población penitenciaria más de lo que exijan las necesidades de protección y sin someterlas a nuevos riesgos de malos tratos. Deberían estudiarse programas de capacitación para sensibilizar a los funcionarios de prisiones acerca de la

importancia de adoptar medidas eficaces para impedir y acabar con los abusos entre presos, y dotarlos con medios para hacerlo. De conformidad con el Conjunto de Principios para la Protección de Todas las Personas Sometidas a Cualquier Forma de Detención o Prisión, debería dividirse a los presos por sexo, edad y gravedad del delito presuntamente cometido, y separarse a los que han delinuido por primera vez y los reincidentes, y a los detenidos en prisión preventiva y los condenados.” (E/CN.4/2003/68, para. 26(j)).

En caso de que sus investigaciones apoyen o sugieran la exactitud de las alegaciones arriba mencionadas, quisiéramos instar al Gobierno de Su Excelencia a que adopte todas las medidas necesarias para proteger los derechos y libertades de la persona mencionada e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que adopte las medidas eficaces para evitar que se repitan tales hechos.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos traídos a nuestra atención. En nuestro deber de informar sobre esos casos al Consejo de Derechos Humanos, estaríamos muy agradecidos si pudiéramos obtener su cooperación y sus observaciones sobre los siguientes asuntos:

1. ¿Son exactos los hechos a los que se refieren las alegaciones?
2. ¿Fue presentada alguna queja por parte de los reclusos o de sus familiares? ¿Si se presentaron, cuál fue el órgano que las consideró?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con los casos, incluyendo los resultados de los exámenes médicos llevados a cabo. Si ellas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

Government reply dated 11 February 2011

Response available at; <http://www2.ohchr.org/English/issue/executions/annual/html>

Venezuela: la Jueza María Lourdes Afiuni Mora privada de su libertad y alegaciones de tortura y malos tratos

Violación alegada: amenazas de muerte

Persona objeto del llamamiento: 1 mujer

Carácter de la respuesta: Alegaciones rechazadas sin adecuada substanciación

Observaciones del Relator Especial

El Relator Especial agradece la respuesta transmitida por parte del Gobierno Venezolano, sin embargo lamenta que el Gobierno rechazara las alegaciones indicadas en el llamamiento urgente sin haber proporcionado información adecuada que contraviniera los hechos aludidos. Teniendo en cuenta que la jueza Afiuni Mora habría sido objeto de varias comunicaciones de otros mandatos, el Relator Especial considera importante que el Gobierno proporcionara información actual sobre la situación de la jueza Afiuni Mora. Como consecuencia de la respuesta insuficiente, el Relator Especial reitera su grave preocupación por la integridad física y psicológica de la jueza Afiuni Mora.

Llamamiento urgente con fecha 1 de abril de 2010, enviada junto con la Relatora Especial sobre la independencia de magistrados y abogados; y de Relatora Especial sobre la situación de los defensores de los derechos humanos.

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con la Jueza María Lourdes Afiuni Mora, quien se encuentra detenida en el Instituto Nacional de Orientación Femenina (INOF) desde el 18 de diciembre del año 2009, después de haber sido transferida desde la Sede de la Dirección General de los Servicios de Inteligencia y Prevención (DISIP, ahora SEBIN) donde permanecía desde su arresto, el 10 de diciembre del año 2009. La Sra. María Lourdes Afiuni Mora fue objeto de un llamamiento urgente enviado por el Presidente Relator del Grupo de Trabajo sobre la Detención Arbitraria; la Relatora Especial sobre la independencia de magistrados y abogados; y la Relatora Especial sobre la situación de los defensores de los derechos humanos de fecha 16 de diciembre de 2009. Al día de hoy, lamentamos no haber recibido una respuesta a esta comunicación.

De acuerdo con las informaciones recibidas, se informa que durante los tres meses que la Jueza María Lourdes Afiuni Mora lleva privada de libertad, ha sido objeto de varios atentados contra su vida por las reclusas del Instituto Nacional de Orientación Femenina, ya que permanece recluida junto a las demás detenidas, incluyendo una proporción importante de mujeres condenadas por la Jueza Afiuni Mora a penas de prisión. Se han expresado serios temores por su vida y su integridad física.

De acuerdo con la nueva información recibida, las reclusas del Instituto Nacional de Orientación Femenina habrían tratado de quemar viva a la Jueza Afiuni Mora en dos ocasiones, y en otra ocasión, la habrían tratado de asesinar con un cuchillo. Recientemente, una sicaria habría intentado repetidamente agredir a la Jueza Afiuni Mora con hojillas y cuchillos.

Se informa que el 22 de marzo de 2010, día en el cual la primera audiencia para presentar los cargos en contra de la Jueza Afiuni Mora estaba prevista, se canceló dicha audiencia mediante un cartel pegado en la puerta del tribunal, indicando que habría despacho, pero no para la causa de la Jueza Afiuni Mora.

Se informa que el mismo día, después de este acontecimiento, el abogado de la Jueza Afiuni Mora pidió el expediente de su clienta en el tribunal, el cual le fue negado. Dicho abogado habría intentado interponer una denuncia en la inspectoría de tribunales del Distrito de Caracas, la cual le fue negada.

En este contexto, pero sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de su Excelencia sobre los artículos 3, 6, 8, 9, 10, 11, y 12 de la Declaración Universal de Derechos Humanos, y los artículos 6, 9, 10, 14 y 15 del Pacto Internacional de los Derechos Civiles y Políticos del cual la República Bolivariana de Venezuela es Parte. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

Queremos solicitar al Gobierno de su Excelencia que se aplique a la Jueza Afiuni Mora sea recluida en un sitio diferente de los presos comunes, destinado a personas que necesiten protección, dado su condición de funcionaria pública, y dada la obligación del Estado Bolivariano de Venezuela, de acuerdo con los artículos 43 y 46 de la Constitución, que estipulan que el derecho a la vida es inviolable, que el Estado será responsable de la vida de las personas que se encuentren privadas de su libertad, y que toda persona tiene derecho a que se respete su integridad física, psíquica y moral.

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

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

Nos permitimos recordar a su Excelencia el artículo 12, párrafos 2 y 3 de la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, de proteger a toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración.

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

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

Quisiéramos llamar la atención del Gobierno de Su Excelencia sobre el Artículo 9 (3) del Pacto Internacional de derechos Civiles y Políticos, el cual estipula que “Toda persona detenida o presa a causa de una infracción penal será llevada sin demora ante un juez u otro funcionario por la ley para ejercer funciones judiciales, y tendrá derecho a ser juzgada dentro de un plazo razonable o a ser puesta en libertad. La prisión preventiva de las personas que hayan de ser juzgadas no debe ser la regla general, pero su libertad podrá estar subordinada a garantías que aseguren la comparencia del acusado en el acto del juicio, o en cualquier momento de las diligencias procesales y, en su caso, para la ejecución del fallo”.

Se expresan serias preocupaciones de que las actuales condiciones de detención hayan puesto en serio peligro la vida y la integridad física de la Jueza Afiuni Mora.

En este contexto, deseamos llamar la atención del Gobierno de Su Excelencia sobre el artículo 14 del Pacto Internacional de Derechos Civiles y Políticos, y en particular:

1. Todas las personas son iguales ante los tribunales y cortes de justicia. Toda persona tendrá derecho a ser oída públicamente y con las debidas garantías por un tribunal competente, independiente e imparcial, establecido por la ley, en la substanciación de cualquier acusación de carácter penal formulada contra ella o para la determinación de sus derechos u obligaciones de carácter civil.

3. Durante el proceso, toda persona acusada de un delito tendrá derecho, en plena igualdad, a las siguientes garantías mínimas: (e) interrogar o hacer interrogar a los testigos de cargo y a obtener la comparecencia de los testigos de descargo y que éstos sean interrogados en las mismas condiciones que los testigos de cargo.

También quisiéramos recordar al Gobierno de Su Excelencia los Principios Básicos sobre la Independencia del Sistema Judicial, adoptados durante el Séptimo Congreso de las Naciones Unidas sobre la Prevención del Crimen y el Tratamiento de los Delincuentes, adoptados en Milán el 6 de septiembre de 1985 y en particular sobre el Principio 17, que establece que cualquier acusación contra un juez debe ser investigada pronta e imparcialmente y que el juez tiene derecho a un proceso imparcial.

Es importante recordar que, de acuerdo con los Principios de Bangalore sobre la conducta judicial, la independencia judicial es un requisito previo del principio de legalidad y una garantía fundamental de la existencia de un juicio justo. En consecuencia, el Tribunal deberá defender y ejemplificar la independencia judicial tanto en sus aspectos individuales como institucionales.

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

Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de Su Excelencia una respuesta sobre las acciones emprendidas para proteger los derechos de la Jueza Afiuni Mora.

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo después de los ataques que sufrió la Jueza Afiuni Mora. Si éstos no hubieran tenido lugar o no hubieran sido concluidos, le rogamos que explique el por qué.
3. Por favor indique qué medidas se han adoptado con el objeto de proteger la vida y la integridad física de la Jueza Afiuni Mora.
4. Por favor, indique en qué medida la detención de la Jueza Afiuni Mora es conforme con los estándares y normas internacionales contenidas en la Declaración Universal de los Derechos Humanos, en el Pacto Internacional de Derechos Civiles y Políticos, del cual la

República Bolivariana de Venezuela es Parte, y en la Declaración sobre los defensores de los derechos humanos. Por favor, indique la base legal que justifica el hecho de que la Jueza Afiuni Mora sigue detenida.

Por favor precise si el Tribunal Quincuagésimo (50°) de Control del Circuito Judicial Penal del Área Metropolitana es el juez natural para investigar a la Jueza Afiuni Mora o cuales fueron los criterios para su designación en este caso.

Respuesta del Gobierno

Mediante carta fechada el 28 de julio de 2010, el Gobierno respondió a este llamamiento urgente, incluyendo información adjunta sobre el caso. En su respuesta el Gobierno señaló que eran totalmente falsas las informaciones donde se aseguraba que durante los meses que la Sra. Afiuni llevaba privada de libertad, ésta habría sido objeto de varias agresiones y atentados contra su vida por parte de las reclusas del Instituto Nacional de Orientación Femenina (INOF). Al respecto, se informa que las gestiones para velar por la integridad personal de la Sra. Afiuni comenzaron desde el inicio del proceso penal en su contra, el día 12 de diciembre de 2009, cuando el Juzgado 50° de Primera Instancia en Funciones de Control del Circuito Judicial Penal de la Circunscripción Judicial del Área Metropolitana de Caracas instruyó al Ministerio Público a fin de que ordenara la práctica de un nuevo reconocimiento médico legal a los imputados a fin de establecer las condiciones de salud en las que se encontraban.

Asimismo, se informa sobre una comunicación de la Directora Nacional de Servicios Penitenciarios con fecha de 28 de diciembre de 2009 donde se señala que la Sra. Afiuni está recluida en el área de admisión con otras internas, lugar que se utiliza para casos especiales el cual está totalmente separado de las otras áreas de reclusión de manera que allí no existe riesgo de ser agredida por otras internas. Se informa también de otra comunicación de la misma Directora Nacional de Servicios Penitenciarios con fecha de 25 de enero de 2010 donde se señala que no se presentaron amenazas inminentes a la integridad física y a la vida de la Sra. Afiuni y que los rumores de rociar de gasolina en el pasillo que conduce al área de reclusión de la Sra. Afiuni no eran ciertos, por cuanto no utilizan combustible dentro del penal y la sustancia es de prohibida tenencia en el recinto.

También se informa sobre la situación suscitada respecto a la primera petición de la Sra. Afiuni sobre el cambio de celda y se refiere a las actas relevantes que muestran la reubicación de la Sra. Afiuni a la habitación de máxima seguridad; se acuerda el traslado a otros recintos carcelarios de las internas del INOF que tengan informes negativos de conducta o que hayan podido proferir insultos a las Sra. Afiuni a fin de prevenir algún acto de violencia contra ella; se acuerda la realización de una evaluación por parte de un equipo médico multidisciplinario a los efectos de que preste atención permanente a la mencionada interna.

Asimismo, la Defensoría del Pueblo ha evidenciado las actuaciones realizadas en protección de los derechos humanos de la Sra. Afiuni habiendo practicado inspecciones para velar que, como persona privada de libertad, sea tratada con el debido respeto a la dignidad humana.

Todo lo expuesto anteriormente da cuenta de la seriedad demostrada por las instituciones públicas venezolanas en el cumplimiento de su obligación de proteger la integridad física de la Sra. Afiuni, quien no ha sufrido ningún atentado contra su integridad física desde que se encuentra detenida, gozando de las mejores condiciones posibles que pueden brindarse a una persona que se encuentra privada de su libertad.

Yemen

Excessive use of force against protestors

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: 16 identifiable individuals (protesters, journalists)

Character of reply: No response

Observations of the Special Rapporteur

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

Allegation letter dated 3 March 2011, sent with Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received 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.

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.

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.

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.

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.

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.

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.

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.

In addition to the information above, we have 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.

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.

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.

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.

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.

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.

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.

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.

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.

Concern is 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 is 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.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of the above-mentioned persons.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to on 9 February 1987.

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

With regard to the alleged deaths and injuries which may have resulted from the excessive use of force among protestors and the population, we wish to stress that under international law, excessive use of force and firearms is not permitted when policing peaceful assemblies. We would like to remind your Excellency's Government of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). In particular, principle 12 provides that "everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and

officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.” Principle 13 states that “In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary” and principle 14 states that “In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.

We would also like to draw your Excellency’s Government’s attention to principle 4 which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, principle 5 provides that “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment”

Furthermore, with respect to the allegation according to which security forces have either participated in or stood by as journalists, who were covering the demonstrations, were attacked, we would like to draw your Excellency’s Government attention to article 2 of the Convention against Torture, according to which “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

With regard to the allegations according to which some of the anti-Government demonstrators were beaten and mistreated in police stations while in custody, we would like to draw your Government’s attention to paragraph 1 of Human Rights Council Resolution 8/8 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

Furthermore, with regard to the allegation according to which Mr. Hasan Ba’oom, who suffers from hypertension, heart disease and diabetes, has reportedly been held incommunicado since his arrest on 20 February, and it is not known whether he has been provided with medical care or not, we would like to draw the attention of your Government to paragraph 7c of Human Rights Council Resolution 8/8, which “reminds all States that prolonged incommunicado detention [...] may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person.” Furthermore, we would like to draw the attention of your Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.” (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

We are concerned with allegations of excessive use of force by both security forces and use of firearms and weapons by Government supporters against anti-Government protestors, we wish to refer your Excellency's Government to the obligation "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ...to grant adequate compensation within reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions" (Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, para. 4).

Moreover, given that the reported deaths and attacks against journalists have taken place in the context of demonstrations, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others."

In addition, with regard to allegations of attacks against journalists, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the 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."

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

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

- article 5, point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;
- article 6, points b) and c) which 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.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. While we welcome the directive issued by the President on 24 February ordering his security forces to protect demonstrators and to prevent clashes and direct confrontation between pro- and anti-government protestors, we urge your Excellency's Government to refrain from using excessive force and to take all necessary measures to implement this directive in order to avoid more deaths and injuries. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

1. Are the facts alleged in the above summary of the cases accurate?
2. Have any complaints been lodged by or on behalf of the alleged victims or their families?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victims or their families.
6. Please provide information on the measures taken to ensure the safety of the alleged victims and the peaceful demonstrators.

Death penalty imposed on juvenile offenders

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: 2 Males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 23 December 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the cases of Mr. **Fuad Ahmed Ali Abdulla** and Mr. **Muhammed Taher Thabet Samoum**, both reportedly sentenced to death on charges of murder. The offences were alleged to have been committed when they were below the age of eighteen.

According to the information received

Article 31 of the Penal Code of Yemen, Law 12 of 1994, prohibits the use of the death penalty against all persons below the age of eighteen. Yet, it is reported that the courts do not consistently apply the national legislation on the ban of the death penalty in cases involving minors.

In this context, we have received information on the following cases:

a) Mr. Fuad Ahmed Ali Abdulla has been sentenced to death penalty on the charges of murder, allegedly committed in June 2004. Although the court considered that he was over the age of eighteen at the time of the alleged crime, it is unclear how it determined this age. According to his birth certificate, he was born in 1988. Thus, this would mean that Mr. Fuad Ahmed Ali Abdulla would have been sixteen or seventeen years old at the time of the offence and around the age of twenty two now.

On 18 December 2010, one day before his death sentence was to be carried out, his execution was halted and the case will now be re-examined by the court. It is reported that he is held in detention in Ta'izz prison in the south-west of Yemen.

b) In the second case, Mr. Muhammed Taher Thabet Samoum has been convicted of murder, allegedly committed in May 2002. In the absence of a birth certificate, it is also unclear how the court determined his age. Mr. Muhammed Taher Thabet Samoum maintains that he is aged twenty four, which would have made him around fifteen years old at the time of the offence.

His death sentence has been ratified by the President. He is also at imminent risk of execution. Mr. Muhammed Taher Thabet Samoum is reportedly incarcerated in Ibb prison in the south-western part of Yemen.

While I do not wish to prejudice the accuracy of these allegations, I would like to draw your Excellency's Government's attention to the fact that any judgments imposing the death sentence and executions of juvenile offenders are incompatible with the international obligations Yemen has undertaken under various instruments. Article 37(a) of the Convention on the Rights of the Child, which Yemen ratified on 1 May 1991, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Yemen acceded on 9 February 1987, provides that the death penalty shall not be imposed for crimes committed by persons below the age of eighteen. Such prohibition is also contained in article 31 of the Penal Code of Yemen (Law 12 of 1994).

In this respect, the Committee Against Torture has expressed its concern at reported cases of imposition of the death penalty on children between fifteen and eighteen years of age. In

its concluding observations, it has recommended that the State party “take the measures necessary to ensure that the death penalty is not imposed on children” (CAT/C/YEM/CO/2/Rev.1, para. 21).

With regard to the alleged lack of clarity as to the method applied by the court to determine the age of Mr. Fuad Ahmed Ali Abdulla and of Mr. Muhammed Taher Thabet Samoum, we would also like to draw the attention of your Excellency’s Government to the General Comment No. 10 adopted by the Committee on the Rights of the Child, which states that in the absence of a “proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt” (CRC/C/GC/10, para. 39).

I would therefore respectfully request your Excellency’s Government to take all necessary measures to ensure that Mr. Fuad Ahmed Ali Abdulla and Mr. Muhammed Taher Thabet Samoum are not executed. Moreover, in order to ensure compliance with the absolute ban of the death sentence against juvenile offenders in international human rights law, the death sentence will have to be commuted.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please also indicate whether any tests have been conducted to determine the age of Mr. Fuad Ahmed Ali Abdulla and Mr. Muhammed Taher Thabet Samoum.
3. I would appreciate information regarding the imposition by courts of the death penalty on children since the entry into force of the Law 12 of 1994 (article 31 of the Penal Code) which prohibits the death penalty for all persons below the age of eighteen.

Others

North Atlantic Treaty Organization

Killings during a raid

Violation alleged: Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law

Subject(s) of appeal: 3 females and 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response received from the North Atlantic Treaty Organization (NATO) and awaits a response from the State mentioned in the response of 1 June 2010.

Allegation letter dated 30 April 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to

Human Rights Council resolution 8/3. In that capacity, I frequently prepare communications to Governments regarding allegations I have received of alleged unlawful killings.

I would like to draw the attention of the North Atlantic Treaty Organization (NATO) 30 April 2010. I have also sent a copy of the communication to International Security Assistance Force.

The attached letter concerns information I received regarding civilian deaths in a raid by international and Afghan forces in February 2010. Because some of the information I received concerns NATO, including its military forces, investigations, and press statements, I would like to give you the opportunity to respond to the allegations I received. In particular, I would be grateful for your observations on the following matters:

1. Are the facts alleged in the attached letter accurate?
2. Please indicate the composition of the international and Afghan forces who undertook the raid, including nationality and chains of command.
3. Please provide the details, and where available the results, of any NATO investigation carried out in relation to the deaths described in the attached letter.
4. Please respond to allegations that security forces attempted to conceal the cause of death of Afghan civilians by tampering with evidence and providing false statements concerning the events leading to the deaths.
5. Please indicate whether an apology, compensation or other payments have been provided by NATO to the families of the victims.
6. Please indicate the steps taken by NATO to ensure that press releases are coordinated with investigations in order to avoid disseminating incorrect information.

Reply from the North Atlantic Treaty Organization dated 1 June 2010

I am writing with reference to your letter of 30 April 2010, to which NATO Secretary General Rasmussen has asked me to respond. In the letter, you ask six specific questions about the alleged incident which took place near the town of Gardez, in Afghanistan's Paktia province, on 12 February 2010.

It has been confirmed to me that the military forces involved in that incident were from one single nation and under its full operational control. That being the case, I understand that the nation in question is in the process of investigating the incident and is preparing a response to the first five questions you have concurrently asked Secretary General Rasmussen and General McChrystal. It would therefore be inappropriate for me to comment on those particular issues.

You also asked NATO to "...indicate the steps taken by NATO to ensure that press releases are coordinated with investigations in order to avoid disseminating incorrect information." We recognize that there were inaccuracies in the initial press releases on this incident. A subsequent release acknowledged the inaccuracies and announced the current investigation. General McChrystal is taking steps to ensure that press releases reflect as accurately as possible what we know about operational incidents. Upon conclusion of this investigation, a further statement will be released to make the results public.

Let me take this opportunity to reiterate the NATO and ISAF commitment to minimizing civilian casualties. The ISAF Commander General McChrystal, and the wider military chain of command, continue to devote exhaustive efforts to this issue. Those efforts include the rigid application of existing tactical directives and related Standard Operating Procedures (SOP's) that seek to address this issue. These directives and SOP's together

with the training provided for ISAF personnel are continuously reassessed in light of our developing knowledge and understanding, and where necessary refined and updated.

When incidents do occur, they are being jointly investigated by ISAF and representatives of the Afghan government in an open and transparent manner.

In closing, I can assure you that the important issues you raise are already, and will remain, very much within the attention of NATO AND ISAF.

International Security Assistance Force: Killings during a raid

Violation alleged: Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law.

Subject(s) of appeal: 3 females and 2 males

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the International Security Assistance Force has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Allegation letter dated 30 April 2010, sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 8/3. In that capacity, I frequently prepare communications to Governments regarding allegations I have received of alleged unlawful killings.

I would like to draw the attention of the International Security Assistance Force (ISAF) to the attached letter, which I have sent to the Government of the United States on 30 April 2010. I have also sent a copy of the communication to North Atlantic Treaty Organization.

The attached letter concerns information I received regarding civilian deaths in a raid by international and Afghan forces in February 2010. Because some of the information I received concerns ISAF, including its military forces, investigations, and press statements, I would like to give you the opportunity to respond to the allegations I received. In particular, I would be grateful for your observations on the following matters:

1. Are the facts alleged in the attached letter accurate?
2. Please indicate the composition of the international and Afghan forces who undertook the raid, including nationality and chains of command.
3. Please provide the details, and where available the results, of any NATO investigation carried out in relation to the deaths described in the attached letter.
4. Please respond to allegations that security forces attempted to conceal the cause of death of Afghan civilians by tampering with evidence and providing false statements concerning the events leading to the deaths.
5. Please indicate whether an apology, compensation or other payments have been provided by NATO to the families of the victims.
6. Please indicate the steps taken by NATO to ensure that press releases are coordinated with investigations in order to avoid disseminating incorrect information.

The authorities in Gaza

Death penalty imposed by the Gaza Military Court

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: 2 Males

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the authorities in Gaza have failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 29 April 2010, sent with the Special Rapporteur on the independence of judges and lawyers.

In this connection, we would like to draw your attention to information we have received regarding the recent executions of Mr. **Mohammad Ismaeil (el Saba')** and Mr. **Nasser abu Freih** and the alleged imminent execution of several people who were sentenced to death by the Gaza Military Court.

According to information received

Mr. Mohammed Ibrahim Isma'il (al-Saba'), aged 37 and a resident of Rafah, was sentenced to death on 3 November 2009, by the Gaza Military Court after he was convicted on charges of treason and involvement in a killing. He was partly convicted on the basis of his own confession which had allegedly been made as a result of torture.

Mr. Nasser abu Freih, aged 34, was sentenced to death by the Gaza Military Court on 22 February 2009, after being convicted of charges of "collaboration with hostile parties".

It is reported that on 15 April 2010, the authorities in Gaza executed Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih.

We have also received information that since 2007 the Gaza Military Court has sentenced several people to death after being convicted on charges of treason. These people are at imminent risk of execution including:

- (1) Emad Mahmoud Sa'd Sa'd, aged 25, a resident of the West Bank who was sentenced to death on 28 April 2008;
- (2) Wael Sa'eed Sa'd Sa'd, aged 27, a resident of the West Bank who was sentenced to death on 15 July 2008;
- (3) Mohammad Sa'd Mahmoud Sa'd, a resident of the West Bank who was sentenced to death on 15 July 2008. He was tried in absentia;
- (4) Ayman Ahmad Awad Daghama, aged 28, a resident of the West Bank who was sentenced to death on 12 November 2008;
- (5) Mahran Abu Jodah, aged 28, a resident of Hebron who was sentenced to death on 25 January 2009;
- (6) Anwar Bargheet, aged 59, a resident of Hebron who was sentenced to death 28 April 2009;
- (7) Saleem Mohammad El Nabheen aged 27, from Al-Boreij camp in Hebron who was sentenced to death 7 October 2009. He is currently being held at Gaza Central Prison;

- (8) Abed Kareem Mohammad Shrier, aged 35, from Gaza who was sentenced to death 29 October 2009. He is currently being held at Gaza Central Prison;
- (9) Izz El Din Rasem Abed El Salam Daghri, aged 38, who was sentenced to death on 9 November 2009, after being convicted on charges of treason.

We have previously addressed a communication dated 16 November 2009, to the authorities in Gaza regarding the case of **Saleem Mohammed Saleem al-Nabahin**, who was sentenced to death by a military court in Gaza, to which we are yet to receive a response. In that communication we expressed concern regarding imposition of the death penalty on grounds of treason and the provisions of Article 131 of the Revolutionary Penal Code which permits the imposition of the death sentence for conduct which does not involve intentional killing, as required by international law which restricts imposition of the death penalty to the most serious crimes.

While we do not wish to prejudge the accuracy of the allegations reported above, we would like to respectfully draw the attention of the authorities in Gaza to several principles applicable to this case under international law.

We would like to remind the authorities in Gaza that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude the crime of treason.

With regard to the allegation that Mohammed Ibrahim Isma'il (al-Sabe') was partly convicted on the basis of evidence obtained through torture we wish to bring to the attention of the authorities in Gaza Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." This provision reflects a principle of customary international law and was reiterated in paragraph 6c of Human Rights Council resolution 8/8 of 2008. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in article 5 of the Universal Declaration of Human Rights. Only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right.

With regard to use of military courts we would like to bring to the attention of the authorities in Gaza the recommendations made by the former Commission on Human Rights which has stated "States that have military courts or special criminal tribunals for trying criminal offenders to ensure that such courts are an integral part of the general judicial system and that such courts apply due process procedures that are recognized according to international law as guarantees of a fair trial including the right to appeal a conviction and sentence" (Official records of the General Assembly, Fifty Sixth Session, Supplement 40 (A/56/40) para 76). The observations of the Human Rights Committee also provide guidance as they have noted that "the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14 of the International Covenant on Civil and Political Rights."

With regard to the alleged status as civilians of Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih, we would recall that various international bodies, including the Human Rights Committee, have stated that military tribunals should not have jurisdiction to try civilians. (For an analysis by the Special Rapporteur on the Independence of Judges and Lawyers see A/6/383 para 24) The Committee has recently concluded that “the jurisdiction of military courts over civilians is not consistent with the fair, impartial and independent administration of justice”. See Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40 (A/56/40), chap. IV, para. 76 (12).

We therefore urge the authorities in Gaza to take all necessary steps to ensure that criminal proceedings in Military courts fully comply with international law standards. Considering the irreversible nature of the death penalty, this can only mean that the authorities in Gaza should not carry out capital punishment until all concerns we have raised are dispelled in their entirety.

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

1. Are the facts alleged in the above summary of the case accurate?
2. What is the alleged conduct that Mr. Mohammad Ismaeil (el Saba') and Mr. Nasser abu Freih were found guilty of which underlies the charges of “collaborating with the enemy”?
3. Please explain the legal basis, composition, appointment procedures and guarantees of independence and impartiality governing Permanent Military Courts in Gaza.
4. Please provide information as to why Permanent Military Courts in Gaza try civilians and please indicate the type of offences in which the military courts have jurisdiction to try civilians.
5. Please indicate what measures are put in place to ensure that due process procedures are respected in military courts in accordance with international law guarantees for fair trial including the right to be represented by counsel and the right to appeal a conviction and sentence.
6. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made, is implemented in the Gaza.
7. Please provide information of the charges on which the following people were found guilty Tae'r Mahmoud Hosni Rimelaat, Emad Mahmoud Sa'd Sa'd, Wael Sa'eed Sa'd Sa'd, Mohammad Sa'd Mahmoud Sa'd, Ayman Ahmad Awad Daghama, Ahsraf Shafeeq Husein Em raziq, Mahran Abu Jodah, Anwar Bargheet, Saleem Mohammad El Nabheen, Abed Kareem Mohammad Shrier, and Izz El Din Rasem Abewheth and whether their trials of complied with fair trial safeguards as guaranteed under international law.

Appendix

I. INVESTIGATIONS INTO A VIDEO FOOTAGE WHICH ALLEGEDLY DOCUMENTS MEMBERS OF THE SRI LANKAN ARMY COMMITTING EXTRAJUDICIAL EXECUTIONS.

Commentary by the Special Rapporteur:

On 30 November 2010, the UK television station Channel 4 provided video material of around five minutes in duration to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christof Heyns. The video allegedly depicts Sri Lankan soldiers summarily executing Tamil prisoners during the civil war in Sri Lanka.

The Special Rapporteur, delivered a communication to the Government on 15 December 2010, informing them that he would be investigating the video. On 26 April 2011, the Special Rapporteur informed the Government that he had concluded the technical assessment to establish the authenticity of the video footage and transmitted electronic as well as hard copy versions of the reports of the investigation to the Government (one annexure was inadvertently left out but provided in electronically on 29 April). When the Government submitted its Response on 11 May, it was stated that there were problems with reading parts of the hard copy of the material, but the complete report was made available by 29 April.

The overall conclusion reached by the experts is that the video is authentic and the events reflected in the video footage occurred as depicted. The Special Rapporteur has concluded that the video footage indicates the commission of serious crimes, which should together with any other available evidence be examined systematically and professionally by domestic investigators appointed by the Sri Lankan Government, as well as by an independent, international investigational body, with a clear mandate to establish who should be held accountable for the killings.

The Special Rapporteur has also reproduced below the (a) A technical note in relation to the authenticity of the second extended "Channel 4" video footage regarding Sri Lanka (b) Report of Mr. Daniel Spitz, a forensic pathologist; (c) Report of Mr. Jeff Spivack, a forensic video analyst; (d)

Report of Mr. Peter Diaczuk, a firearms expert; and (e) Report of Mr. Grant Fredericks, a forensic video analyst. The Special Rapporteur has also reproduced communications between the Special Rapporteur and the Government of Sri Lanka.

Reports of the Technical Assessment conducted by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

A. Technical Note by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christof Heyns, in relation to the authenticity of the second, extended Channel 4 videotape regarding Sri Lanka

A. Background

1. On 30 November 2010, the UK television station Channel 4 made available video material of around five minutes in duration (in this note called the 'extended video') to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr.

Christof Heyns. It described this video, extracts of which had been aired by Channel 4 around the same time as a longer version of an earlier video of approximately one minute (in this note called the 'first video'), which was aired by Channel 4 on 25 August 2009 and was said to depict Sri Lankan soldiers summarily executing Tamil prisoners during the civil war in that country.

2. The first video has been the subject of extensive communication between the Government of Sri Lanka ('the Government') and the former Special Rapporteur Mr. Philip Alston, in the form of an exchange of letters and press releases, as well as a 'Consolidated Response' to the Channel 4 video by the Government and a subsequent 'Technical Note' by Mr. Alston.

3. In reacting to the screening of this video by means of a letter of allegation to the Government of Sri Lanka, Mr. Alston's contention was that the video necessitated an impartial investigation into the question whether war crimes had been committed. The Secretary-General of the United Nations as well as other diplomats also expressed their concern about the contents of the video. The Government, however, denied the authenticity of the video.

4. In order to support this contention, the Government presented a 'Consolidated Response' to the media and the diplomatic community. It cited four reports of investigations into the authenticity of the video which the Minister of Disaster Management and Human Rights said it had obtained from its experts. While those cited seem to be regarded by the Government as experts in the field of video and audio technology, the Government also relied on their opinions on matters of forensic pathology and ballistics. According to the Minister these reports proved that the video was 'false and fabricated'. The claim was made that the Government's investigations proved that the recording was not made on a cell phone, as stated by Channel 4, but on a high quality digital camcorder or similar equipment, and then edited to reflect the atrocities and to make it appear to have been made on a cell phone, in order to discredit the Government.

5. Mr. Alston commented that he had not seen the original version of three of the four reports and asked to see them. Mr. Alston also questioned the impartiality of those who conducted the investigation, pointing out that two of the four were members of the armed forces (one was a Major, the other a Brigadier), the body which actions have been called into question, and the other two were apparently also citizens of Sri Lanka who had previously acted as advisers to the Government.

6. Mr. Alston then commissioned a study of his own by three independent experts with no links to the country or government under consideration. In addition to a video and audio expert, he engaged the services of a forensic pathologist as well as a ballistics expert, who worked independently of one another. They contested the scientific nature of the comments attributed by the Government to its own investigators. On the basis of these reports Mr. Alston concluded that 'while there are some unexplained elements in the video, there are strong indications of its authenticity.' He made the full reports available to the Government.

7. In its subsequent reactions, the Government has relied on these 'unexplained elements', clearly acknowledged by the Rapporteur, to contest his claims that the video was authentic and to justify rejection of his continued calls for an independent investigation.

8. In particular, the following issues were identified as unexplained: The date inscribed on the video was after the hostilities had ceased; there is an 'A' in the last 17 frames of the video, which suggests that some editing had been done; one victim's leg remains upright after he has apparently died; and another's dead body moves without an apparent reason.

9. It appears from the record of communication between the Government and the Special Rapporteur that the Government's contention regarding the first video is confined to the question whether the video is authentic or 'doctored' or 'a fake'. Issues such as whether the members of the military depicted in the video wear Sri Lankan uniforms (except for one soldier who wears a white T-shirt) and whether they speak Sinhala (this is in fact recognized in the excerpts of the report provided by Maj Bandara) or for that matter whether the setting of the video is in Sri Lanka, are apparently not contested. It is also not contested that the actions depicted in the video, if they reflect real events, constitute serious international crimes and violations of international human rights law. While the independence of those whom the Government say have written reports for it has been questioned by the Special Rapporteur, the independence and expertise of the experts engaged by the Special Rapporteur has not been placed in doubt.

10. The single point of contention that has emerged from the intensive communication over several months between the Special Rapporteur and the Government is therefore the authenticity of the first video, in the sense that the Government contends that it had been 'doctored'.

B. The new, extended video

11. On the extended video additional executions are shown, as well as bodies that lie on a track of ground. The faces of some of the soldiers are visible. Also clearly visible is that others are filming the scene with cell phones. One of the voices on the extended video says: 'Do not use the phone, we will be reprimanded.'

12. The extended video offers the opportunity to see the first video (which forms one segment of the extended video) in a broader context, and in particular to test the results of the earlier investigations, to see whether anything stated by the independent experts has been disproved by this new video, and whether answers to the unexplained issues may be provided by the new material.

13. I as Special Rapporteur, who took over the mandate from Mr. Alston in August 2010, informed the Government on 15 December 2010 that I would be investigating the extended video. Upon request from the Government I informed of the names of the experts who have been commissioned to conduct the investigation, and the Government was supplied with a copy of the video as received from Channel 4, to enable it to do its own investigation.

14. In view of the fact that the expertise and independence of the experts who investigated the first video was not questioned by the Government, and the fact that they were already familiar with part of the material, the services of the same experts were again obtained, to comment within their fields of expertise on the authenticity or falsity of the video. As in the past they agreed to do this free of charge, as a form of public service.

15. In addition, some further evidence was obtained and considered by the current me that would be useful in better understanding the context of the video. This included a translation of what is being said in the video, from the original Sinhala. A large number of additional pictures and other material were received from NGOs who have concerns surrounding these events. However, as will be explained below, the latter were not investigated in any detail by me.

16. Enquiries were also made by me about the origins of the video from Channel 4. However, given that the video was more than likely filmed by an insider, and then made available to the media (whether this was done for compensation or not is not known), it is not a surprise that the journalists in question maintain that they have obtained the videos on

the conditions of confidentiality from their sources. While such information would no doubt be very useful in any subsequent criminal trials, not least because it would provide one with an eye-witness of the events who could identify those involved (also those not seen on the video) it is not regarded as indispensable for current purposes, which is simply to ascertain the authenticity of the video itself.

17. The authenticity of a video such as the one under consideration can be established through a comprehensive forensic investigation, covering the different aspects of the video, which should include at least the audio and video quality. Forensic pathologists and ballistics experts can also contribute in important respects to such an investigation. In order to be credible such investigations have to be conducted by independent people of recognized expertise. Independence in this context, according to well-established jurisprudence means there should not even be a perception of bias. Close connections to the Government or State under consideration – such as nationality and/or employment – are bound to create a perception of bias and a perceived conflict of interest.

18. The new reports of the three experts on the extended video provided to me are attached. The picture that emerges is that the events that are reflected in the video in fact occurred as depicted. These videos – both the first and the extended version - show real people who are being summarily executed.

19. The first report on the extended video, contained in Annexure ‘A’, is by audio and video expert Mr. Jeff Spivack. His qualifications and experience are detailed in his report, as was the case with his previous report.

20. According to his report the extended video in fact consists of five segments, not in chronological sequence. This appears to be the result of the rudimentary editing that is possible on a cell phone. In this case the meta-data indicates the use of Philips software, which can be used on a variety of cell phones. However, cell phone editing capacity could not have been used to produce the images of executions captured on the video. ‘At most, integrated mobile phone editing software could delete evidence that occurred before or after the remaining video, or reorder video sequences.’ Cell-phone editing ‘... could not possibly create even a crude simulation of the subject matter present in these recordings, much less a realistic simulation.’ (p 13)

21. He concludes that ‘... the results of testing procedures and content analysis are persuasive that the events depicted on the available video/audio recordings are authentic.’ (p 13)

22. The second report, contained in Annexure ‘B’, is by Mr. Daniel Spitz. His biography and expertise are also described in his report. His conclusion upon having studied the extended video is as follows: ‘Subsequent to my review of these materials, it is my opinion that the execution shootings shown in the videos represent real executions of multiple individuals secondary to close range gunshot wounds using high powered assault rifles.’ (p 1)

23. The third report, contained in Annexure ‘C’, is by Mr. Peter Diaczuk, a firearms evidence expert, who comments on the three clips in the extended video where firearms are being discharged. His experience and training is indicated in his report. His conclusion is as follows: ‘The three video sequences reviewed accurately depict firearms being discharged, and the recoil observed is consistent with the firing of live ammunition.’(p 4)

24. Of special importance is the fact that the extended video material has now enabled the experts to address the issues identified as ‘unanswered’ during the first round, and relied upon by the Government as proof that the video was not authentic.

25. The date of 15 (alternatively 18) July 2009 is encoded in the video, while hostilities had ceased in May 2009. One explanation is that the date provided on such a video is determined by the device's date setting, which can be changed by the person using the device. However, according to Mr. Spivack, if the rudimentary editing that is possible on a cell phone is done, and if five segments are put together as we now know was the case here, the date reflected for the video as a whole will be the date of such editing. (p 7)

26. The appearance of an 'A' in the last 17 frames of the first video was also a matter of concern. According to Mr. Spivack the rudimentary editing possible on a cell phone can produce such an effect. (p 13)

27. It was previously unclear why one of the apparent victims on the ground next to a victim being shot shows movement of his left lower extremity. However, Mr. Spitz reports that from the extended video it is clear that the bullet passed through the one person to hit the body of the other (p2).

28. The way in which the leg of one of the victims was maintained in an upright position was likewise not readily explicable when only the first video was available. Dr Spitz now explains that a review of the current video 'better shows the position of the leg and why it maintained an upright position'. The reason is that '... the ankle is supported by resting against the outer aspect of his right leg.' (p3)

29. The integrity of the process followed by these experts in respect of the first video finds confirmation in the fact that they marked certain aspects of that video as unresolved, when they did not have sufficient evidence to express themselves on those points. This uncertainty has now been resolved on the basis of the newly available evidence, which could not have been foreseen at the time when the first reports were being written. The above sequence of events show that they were describing the facts as they presented themselves, and were not out to prove any point.

30. The above serves as a coherent and credible foundation for the conclusion that the extended video is authentic, and thus warrants calling for the accountability of those responsible for these atrocities. It should be stressed however that the claim is not being made here that any specific individuals are guilty or that State responsibility has been established – the point is rather that there is a well-founded case for the government to answer.

31. Reference was made in the Technical Note of Mr. Alston to an article in *The Times* newspaper where an expert, whom it had commissioned, Grant Fredericks, also regarded the first video as authentic.

32. The Government told the Office of the High Commissioner for Human Rights in Geneva, when it was provided with the names of the experts who were going to investigate the extended video, that it would be more persuasive if a report by someone who was not part of the team of Mr. Alston during his investigation were made available. Because the independence of these experts was not challenged by the Government when their first reports were considered, it is hard to see the foundation for this point. However, to err on the side of caution, the current writer has asked Mr. Fredericks as well to do an independent investigation into the extended video. His report is attached as Annexure 'D'.

33. Mr. Fredericks – whose credentials are set out in his report – is of the opinion that Phillips software was used, probably on a Nokia cell phone to make the extended video. (p28) He concludes as follows: 'Giving consideration to my research and to the observations listed in this report, I have found no evidence to suggest that [the extended video] contains fabricated images or audio elements. The execution scenes contain no 'virtualization' (computer generated effects). I have therefore formed the opinion that [the extended video] is authentic in that it accurately portrays what it purports to show.' (p 29).

34. As was noted at the outset, the current Special Rapporteur was provided with numerous pictures and other material said to depict the last phases of the civil war in Sri Lanka. Sources at Channel 4 have also indicated that a much longer version of the extended video exists and could become available. The material that has already been provided includes pictures and videos of a Tamil journalist named Isaipiriya who bears a striking resemblance to one of the persons whose dead body is captured in the extended video. The material also includes pictures of the dead body of Charles Anthony (son of the late LTTE leader Prabhakaran) who was killed during the final phases of the war, in a group of pictures containing one that corresponds with images captured in the last section of the extended video. Channel 4 has also provided the Special Rapporteur with a video that captures the removal of the naked bodies of women by soldiers, said to be government troops. On this video – as is the case with the extended video – the faces of those in uniform can clearly be seen, and soldiers using cell phones as cameras are also visible.

35. These and other links with the extended video have so far not been investigated in any detail by the Special Rapporteur, in view of the limited nature of his capacity for fact-finding and forensic investigations. In view of the serious nature of the material covered by the growing body of potential evidence, it should be investigated by a body with the necessary capacity to do a comprehensive, thorough study. The material mentioned above will be made available to the Government upon request, and to such an international body, in order to assist any credible enquiry.

36. There is no indication at present that either the Attorney-General, or internal structures within Sri Lanka, such as the Lessons Learned and Reconciliation Commission, have given serious consideration to this video, or its implications, in their work.

C. Conclusion

37. The present note confines itself to the question of the authenticity of the extended video, based on the results of the independent, multi-disciplinary forensic studies that have been commissioned. The conclusion that emerges from these reports is that the video is authentic.

38. The outstanding issues identified during the investigation of the first video have now been resolved. This includes the apparent inconsistent date on the first video. However, even if that had not been done, the question could be asked how material that issue was in the first place. If someone had manufactured a false video of the events during the final stages of the war, with the malicious intent of portraying the Government's conduct during the war in a negative light, the last thing one would expect such a person to do is to provide the video with a date that falls months after the completion of the war. Likewise, it appears highly unlikely that a person who wants to create the impression that a cell phone was used would be so careless as to leave an 'A' on the frames if that can only be done on a high quality video camera. However, irrespective of how much weight could legitimately have been accorded to these issues, it is submitted that they have now been resolved.

39. On the basis of the available evidence the process of determining accountability for the crimes that have been committed should proceed with sufficient speed to avoid a situation where witnesses, accused or evidence disappear.

40. The extended video should be considered in the context of the growing body of evidentiary material which appears to relate to the events during the civil war in a comprehensive manner, covering possible atrocities by all concerned, by an institution with

the necessary capacity and level of technical skill to cover such an extensive enterprise in a professional and comprehensive manner, on the basis of a clear mandate to perform this function.

41. What is reflected in the extended video are crimes of the highest order – definitive war crimes. Judging by the use of cell phones by soldiers in the video, there may well be other records of the same events available. There appear to be links that can be made to other evidentiary material, which is already available or may still be brought to light, giving a clearer picture of what happened during the last phase of the war. Investigating the identity of those whose faces are captured so clearly on these videos cannot be difficult for the Government, which may contact the commanders of the troops who participated in the last phases of the war. Similarly, an international investigation with appropriate powers of inquiry and witness protection mechanisms will also be well placed to address these issues.

42. As has been pointed out in correspondence with the Government, it is the primary duty of the State to investigate this compelling evidence of horrendous crimes – crimes which the international community cannot allow to go unpunished. This is stated in clear terms in paragraphs 9 and 10 of the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted on 24 May 1989, with provides under the heading ‘Investigations’ as follows:

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

43. This obligation on the State to investigate cannot be discharged by simply denying that anything untoward has happened. It can also not be discharged by assembling a group of people tied in one way or another to the government under question who are asked to comment on the videos, and expecting the international community to accept their expertise in all matters ranging from forensic analysis of videos to pathology to ballistics, without even seeing the full text of their reports or establishing their expertise in these fields. Denials based on such evidence are not credible.

44. The mandate of the domestic mechanism that the Government of Sri Lanka has created does not require a fact-finding investigation into violations of international law and international humanitarian law, and its *modus operandi* so far does not indicate that it is doing this. In addition to whatever steps can be taken to rectify the domestic process, an international investigation by an independent team with full investigative powers and capabilities should be initiated. It should make recommendations on any possible prosecutions or other measures to be taken.

45. In conclusion, what has been said above should be re-emphasized, to avoid any misunderstandings: This note does not purport to find the Government or any of its agents

guilty of any offence. This can only be done by a court of law. Instead, the claim is made here that the extended video provides credible evidence that serious crimes have been committed within the context of the Sri Lankan civil war, which should together with any other available evidence be examined systematically and professionally by domestic investigators, as well as by an independent, international investigational body, with a clear mandate in this regard, in order to establish who should be held accountable for these cold-blooded killings.

B. REPORT OF MR. JEFF S. SPIVACK - A FORENSIC VIDEO ANALYST

Forensic Video Analysis Supplemental Report

Re: Authenticity of Digital Video/Audio Recording of Purported Sri Lanka Executions

Introduction:

On or about December 11, 2010, Professor Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, requested, in his official capacity, that this author, hereinafter alternately referred to as “the analyst”, conduct a supplemental analysis of an additional digital video/audio recording purportedly depicting executions of Tamils by Sri Lankan armed forces personnel. A portion of this extended recording, first broadcast by Channel 4 television in the United Kingdom on August 25, 2009, appears to depict Sri Lankan military members shooting two unidentified bound and blindfolded individuals in the head at close range with AK-47 variants or similar assault rifles, as well as the presence of several other unidentified deceased or dying individuals. The new recording contains the originally released material, as well as additional video that purports to depict two more shootings, extensive video of a collection of bodies at the site, and video from what appears to be a second location with four additional bodies visible. After the original Channel 4 broadcast, the Sri Lanka government issued a document reporting the results of forensic examinations undertaken by a panel of experts commissioned by the government regarding the authenticity of the video, concluding that the video and events contained therein were “fake” or fabricated. Since the release of a report by Professor Heyns' predecessor, Professor Phillip Alston, Sri Lanka government officials continue to categorically deny the authenticity of all recordings of this incident.

The scope of this analysis is generally limited to an examination of the properties of a recording provided by Professor Heyns, consisting of a digital file identified as “SL1.3GP”. As with the first analysis, this analyst will defer to the expertise of the forensic pathologist retained concurrently by Professor Heyns with respect to apparent gunshot wounds, biomechanical reactions to these apparent gunshot wounds, and related medico legal conclusions, and to the firearms expert regarding terminal ballistics and weapon dynamics, respectively.

About the author:

Jeff Spivack is a Forensic Multimedia Analyst currently in private practice, formerly serving in that capacity with the Las Vegas Metropolitan Police Department. In addition to providing forensic video and audio analysis services, Mr. Spivack provides consulting and training services upon request to law enforcement and prosecutorial agencies, and serves as a senior forensic video software certification instructor for Cognitech, Inc., and is a senior instructor of video forensics for Forensic Data Recovery, Inc. in Canada. Mr. Spivack is a member of the American College of Forensic Examiners Institute, is designated by that organization as a Certified Forensic Consultant, and has been qualified as an expert witness

on the subject of forensic video analysis in courts throughout the United States in both civil and criminal proceedings.

Background:

According to the Scientific Working Group on Imaging Technologies (SWGIT) “*Best Practices for Image Authentication*” Version 1.0 2007.06.04¹², establishing the authenticity of a disputed multimedia (video and audio) recording to a high degree of scientific certainty is highly problematic, particularly when provenance of the recording cannot be verified, as is the case with the subject of this analysis. However, it is sometimes possible to *exclude* the authenticity of a recording submitted for analysis based on factors including, but not necessarily limited to: metadata inconsistent with purported properties of the recording, evidence of image manipulation, evidence of image creation, evidence of staging, evidence of discontinuity, and/or evidence of image processing. As the authors of this SWGIT publication note, “Image Authentication must not be confused with the requirement to authenticate evidence as a precondition to admissibility in court. Likewise, authenticity differs significantly from integrity. Integrity ensures that the information presented is complete and unaltered from the time of acquisition until its final disposition. For example, the use of a hash function can verify that a copy of a digital image file is identical to the file from which it was copied, but it cannot demonstrate the veracity of the scene depicted in the image”.

An exhaustive review of current research on methods for detecting image and video tampering using passive methods reveals sometimes high rates of both false rejection and false acceptance based solely on computerized analysis of such individual criteria as double quantization, planar surface orientation, 2D lighting and shadow analysis, and byproducts of visual splicing, a/k/a “cut and paste” operations. As W. Wang, J. Dong, and T. Tan note in “*A Survey of Passive Image Tampering Detection*”¹³, “There are several techniques based on checking whether some parts of an image undergo some operations that may occur in image tampering. But it will cause some problems. For example, if an authentic image undergoes global scaling or blurring, but image content does not change, these techniques will also consider the authentic image as tampered”. For the purposes of this supplemental analysis, it bears repeating that merely transcoding or converting a multimedia recording from one format to another to facilitate viewing does not in and of itself invalidate the recording's authenticity. Consistent with SWGIT best practices, this analysis will stress accepted methods of file structure and content analysis, while also considering novel approaches to passive tampering detection described in the literature.

Warning:

This report contains gruesome, disturbing images, which depict apparently deceased individuals, sometimes in graphic detail. The decision to include these images was made in

¹² http://www.theiai.org/guidelines/swgit/guidelines/section_14_v1-0.pdf

¹³ <http://www.nlpr.ia.ac.cn/2009papers/gjhy/gh46.pdf>

consultation with the requesting party after careful consideration of the probative value versus the potentially sensational, emotionally distressing nature of the images. This document is intended only for mature audiences, and should not be distributed to children or sensitive adults.

Procedures:

1. MediaInfo Version 0.7.41 was used to obtain metadata contained in the recording provided, identified by file name as “SL1.3GP”, to wit:

Complete name: P:\Sri Lanka Supplemental Analysis Files\SL1.3GP

Format: MPEG-4

Format profile: 3GPP Media Release 4

Codec ID: 3GP4

File size: 7.35 MiB

Duration: 5mn 25s

Overall bit rate: 189 Kbps

Encoded date: UTC 2009-07-15 13:17:23

Tagged date: UTC 2009-07-15 13:17:23

Video ID: 2

Format: H.263

Format profile: BaseLine@4.5

Codec ID: s263

Duration: 5mn 25s

Bit rate mode: Variable

Bit rate: 174 Kbps

Width: 176 pixels

Height: 144 pixels

Display aspect ratio: 4:3

Frame rate mode: Variable

Frame rate: 7.416 fps

Minimum frame rate: 1.876 fps

Maximum frame rate: 7.813 fps

Compression mode: Lossy

Bits/(Pixel*Frame): 0.927

Stream size: 6.75 MiB (92%)

Writing library: Philips

Encoded date: UTC 2009-07-15 13:17:23

Tagged date: UTC 2009-07-15 13:17:23

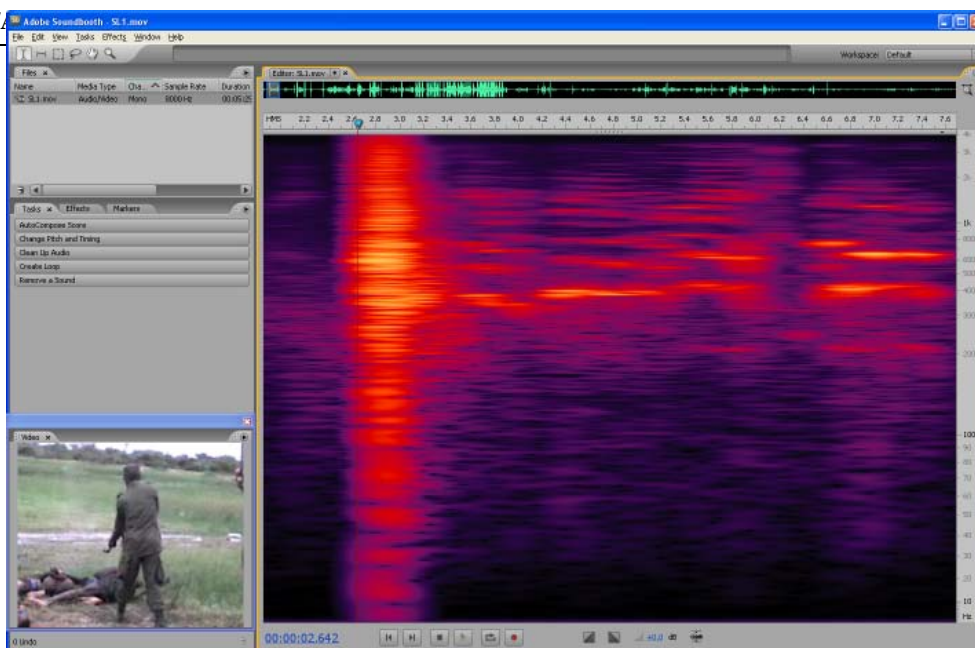
Audio

ID: 1
Format: AMR
Format/Info: Adaptive Multi-Rate
Format profile: Narrow band
Codec ID: samr
Duration: 5mn 25s
Bit rate mode: Variable
Bit rate: 12.8 Kbps
Channel(s): 1 channel
Sampling rate: 8 000 Hz
Bit depth: 13 bits
Stream size: 508 KiB (7%)
Writing library: Philips
Encoded date: UTC 2009-07-15 13:17:23
Tagged date: UTC 2009-07-15 13:17:23

2. Elecard StreamEye v.1.1 software was used to conduct a detailed analysis of the multimedia file's stream statistics, Group of Pictures (GoP) I-frame and P-frame locations, frame macroblock data, and motion vectors.

3. To facilitate further analysis and processing with Cognitech VideoInvestigator and Adobe Soundbooth, QuickTime Professional was used to save a duplicate of the file, changing the file wrapper from .3GP to .MOV. This change of file wrapper/file extension does not alter the media contained in the wrapper in any way. Similarly, the stabilized relevant segments were exported to uncompressed .AVI format with VirtualDub for analysis by Dr. Spitz and Mr. Diaczuk, the forensic pathologist and firearms expert, respectively.

4. Cognitech VideoInvestigator software was used to process the two additional instances of visible weapon discharge, as well as closeup views of apparent gunshot wound victims by using a correlation apparent velocity estimation filter and the corresponding video stabilization filter, enlarging the regions of interest, and rescaling/cropping to 640 X 480 during the stabilization output process. Because the Cognitech software does not process audio, VirtualDub version 1.9.11 was used to add the corresponding frames' audio track previously exported to .WAV format. Stabilized/enlarged versions of these segments were provided directly to the forensic pathologist and firearms/ballistics expert along with the file in its original .3GP format. VideoInvestigator was also used to conduct an arithmetic operation (Absolute A-B) to compare 542 frames that are common to both SL1.3GP and the file submitted during the original analysis, VideoDJ.3GP. During a segment of the newly released video in which bodies (at what appears to be a second location) were recorded from a changing perspective, apparent velocity estimation was calculated and the resulting data applied to a mosaic reconstruction utility to create a single panoramic still image from the video segment. This technique was also used to produce reduced noise image reconstruction views of apparently deceased individuals in prior segments, and those resulting reconstructions were further processed with a Wiener deconvolution filter using a

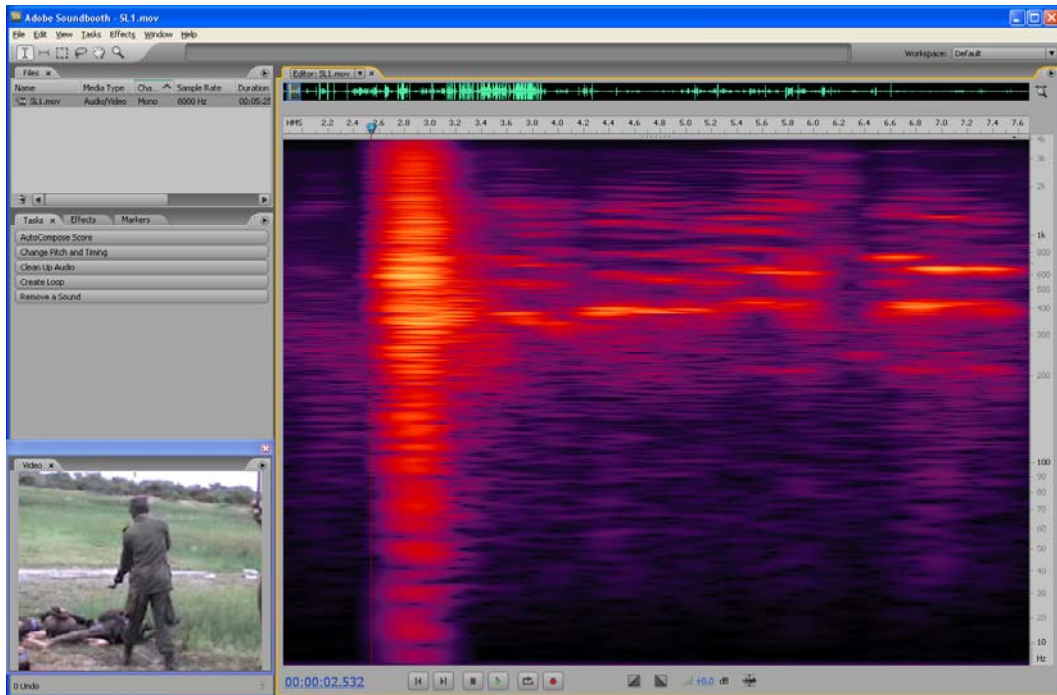


focus blur kernel to counteract the dominant point spread function, thus creating sharper, more detailed images. As a normal consequence of procedures in which apparent velocity estimation was calculated to create a single mosaic image from multiple sequential frames, visual artifacts from the image boundaries are visible, as are variations in histogram values that present as differences in lighting and contrast in different regions of the images. Finally, a region of interest containing potentially suspicious features (primarily presumptive blood pooling) in Frame 812 was selected and processed with a Fourier transform to determine random distribution vs. periodicity. All image processing procedures are non-destructive in that the original file submitted for analysis was not altered; instead, new files containing stabilization and/or other enhancements were produced.

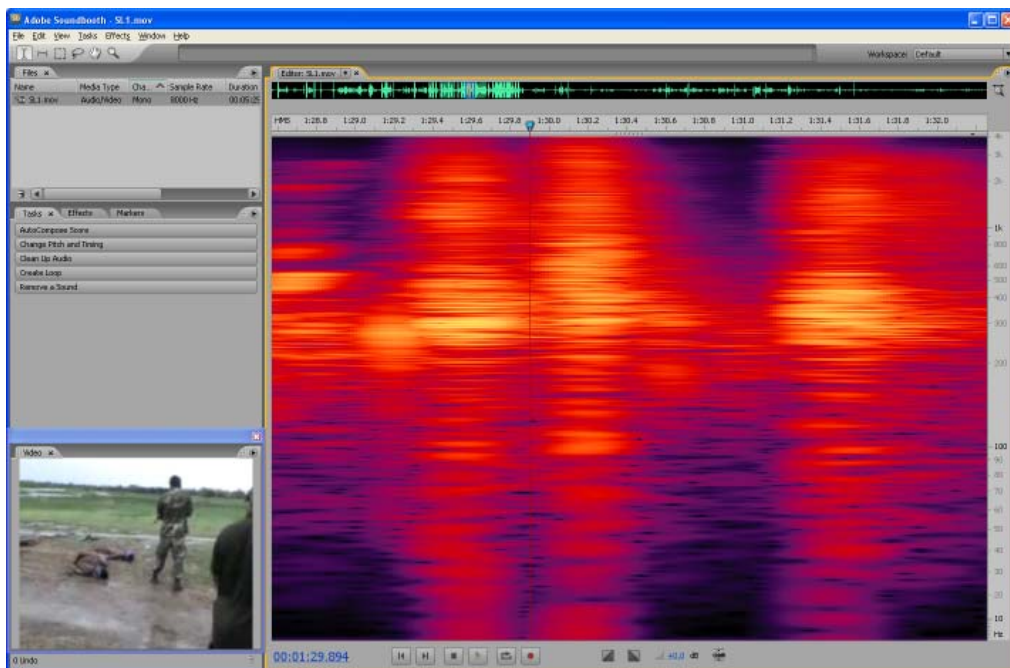
5. Adobe Soundbooth CS3 software was used to open the .MOV file extension duplicate of the recording to determine the extent of video/audio synchronization difference between the first frame in which visual evidence of weapon discharge is present and the corresponding audio for each discharge by simultaneously displaying the video window and audio spectrograph display. For the purpose of this analysis, visual evidence of weapon discharge is defined as visible recoil, what appears to be expanding gasses from the weapon at frame 19, and simultaneous movement of the bodies at the instant of both weapon discharges.

6. Frame by frame analysis of the 2411 video frames for content was conducted using Cognitech Video Investigator and Elecard StreamEye to detect any possible breaks in continuity, invalid frame characteristics, anachronisms, or visual anomalies that could indicate image tampering.

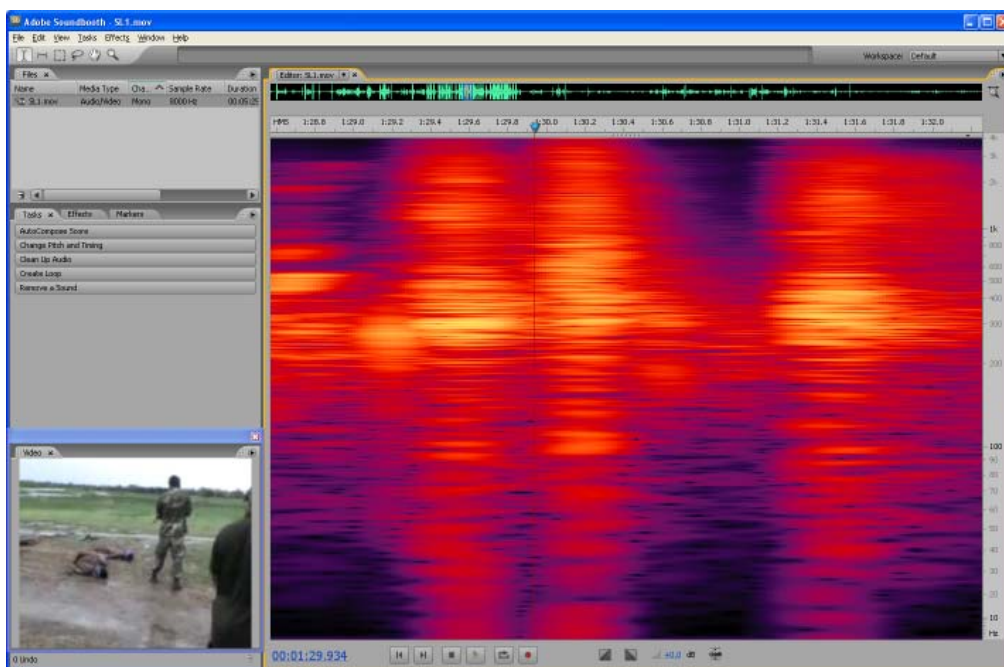
Timeline Indicator of Visible Weapon Discharge at Frame 19 at 00:02.642



Timeline of Corresponding Audio Event at 00:02.532



Timeline Indicator of Visible Weapon Discharge at Frame 663 at 01:29.894



Timeline of Corresponding Audio Event at 01:29.934

Findings:

SL1.3GP contains five distinct segments. The second segment corresponds to the first 542 frames of the VideoDJ.3GP recording. An Absolute A-B arithmetic operation was used to compare the pixel values of each corresponding frame from both files; the test result indicates that the visual content of the corresponding 542 frames is identical. According to the metadata retrieved from the file submitted for analysis, encoded dates and tagged dates for both video and audio components indicate the recording was made on July 15, 2009 at 13:17:23 UTC (Universal Time Coordinated), also known as GMT (Greenwich Mean Time) or Zulu Time. This time, if correct, would be 18:47:23 local time in Sri Lanka based on the standard offset of GMT + 5.5 hours (Daylight Saving Time is not observed in Sri Lanka). The encoded date is well after the alleged date of the incident and, if accurate, would tend to discredit the recording's authenticity without a logical explanation for the discrepancy, as with the first file analyzed, VideoDJ.3GP. In addition, SL1.3GP was encoded three days before VideoDJ.3GP. Again, the encoded date is not conclusive evidence of the actual recording date and time, because it is derived from the mobile device's date and time setting, which can be manually set by the user with many mobile phones. In light of new evidence, specifically the additional content of the newly released recording which is composed of a compilation of multiple segments, it is now readily apparent that both the video originally broadcast on Channel 4 and the newly released extended version are the product of a basic editing software. NXP Software, a subsidiary of Philips formerly known as Philips Software markets a group of basic video editing utilities (LifeVibes VideoStudio, MediaConverter, VideoArtist Lite, and VideoArtist) to mobile phone manufacturers designed to be installed on and operated from a wide variety of Symbian Operating System mobile phones. According to NXP Software, their VideoStudio

software has been installed on over 100 million phones.¹⁴ Note that these software utilities operate on the mobile phone itself, not on an external computer, so files generated as a result of the basic editing functions possible with this software (such as trimming and reordering clips, and adding simple backgrounds or titles) would still contain metadata consistent with a mobile phone.

SL1.3GP video and audio formats, codecs, bit rates, and video width, height, aspect ratio, GoP (Group of Pictures) pattern and ratio of I-frames to P-frames, and format profile/motion vector properties (Level 10 Baseline +/- 4.5 macroblocks outside the video frame boundaries) are entirely consistent with multimedia files produced by a wide variety of mobile phones with video recording capability. The video and audio writing library data both returned as “Philips”, which provides presumptive evidence that the source of the recording was a Philips mobile phone or camera, or a mobile phone equipped with Philips (or a subsidiary such as NXP) software for Symbian Operating System mobile phones. One possible hypothesis for the reference in metadata to Philips is that whatever video camera used to record the video simply contained an imaging sensor manufactured by Philips. While Philips does manufacture Charge Coupled Device (CCD) and Complementary Metal Oxide Semiconductor (CMOS) imaging sensors for many cameras and camcorders, this would not explain the metadata indicating the use of Philips software in the *audio* stream.

Based on spectrographic analysis and comparison with the corresponding visual evidence of weapon discharges, the following determinations and conclusions were made: In the weapon discharge visible in Frame 19, audio is present 0.110 seconds before the first video frame containing visual evidence of the discharge. In the weapon discharge visible in Frame 663, audio is present 0.004 seconds after the first video frame containing visual evidence of the discharge. Comparison of audio spectrographs from the two weapon discharges reveals a significant variation between the two, indicating that these are two separate and distinct audio events. This disparity between the two audio events would preclude the possibility that a single gunshot sound effect was added in an editing process. It is important to note that the temporal rate of the file submitted for analysis (7.416 frames [progressive scan] per second) is insufficient to determine the precise instant of weapon discharge based on visual evidence. For this reason, video/audio synchronization is approximate at best, and does not provide a reliable reference for determining if the audio track has been edited.

Content analysis revealed that there are five different segments within SL1.3GP. Within each of these segments, there were no breaks in continuity (particularly during weapon discharge events), no additional video layers, and no evidence of image manipulation. The segments are arranged out of chronological order, based on the increasing number of bodies present in the segments, and the final segment appears to have been recorded at another location based on differences in natural/geographical features, and the fact that four bodies were visible in the video, as contrasted with the fourteen distinguishable bodies visible by the end of the first four video segments. All segments of video contain visual evidence of the CMOS (Complimentary Metal Oxide Semiconductor) “rolling shutter effect” in the form of geometric distortions (primarily skewing or projection) that are generated in response to camera movement. Note the skewing visible on the left edge of the mobile phone in Frame 37 vs. Frame 1. CMOS imaging sensors are commonly found in mobile phone cameras, while Standard Definition video camcorders typically use CCD (Charge Coupled Device) imaging sensors, which do not produce these distortions. See “*Analysis and Compensation of Rolling Shutter Effect for CMOS Image Sensors*”¹⁵ (L.W. Chang, et

¹⁴ <http://www.software.nxp.com/?pageid=112>

¹⁵ http://140.117.166.1/eehome/ISCOM2005/SubmitPaper/UploadPapers/ISCON05_00159.pdf

al) for a detailed discussion of the CMOS “rolling shutter effect” and compensation methods.



Segment 1 – Frame 1



Segment 1 – Frame

37

Segment 1 (Frame 1 – 70): At frame 19, an unidentified male wearing “olive drab”, a/k/a “OD” fatigues discharges what appears to be an AK-47 variant or similar assault rifle and an unidentified subject who appears to be in the line of fire simultaneously reacts. The shooter's face is visible as he walks toward another unidentified male in uniform holding up what appears to be a camera phone.

Segment 2 (Frame 71 – 612): As previously noted, an image content [A-B] pixel value comparison reveals that this segment is identical to frame 1 – 542 of VideoDJ.3GP. The graphic/logo present for the final 17 frames of VideoDJ.3GP is absent from this segment. The contents of this segment were described exhaustively in the first report on this subject, and will not be restated for this supplemental analysis.

Segment 3 (Frame 613 – 998): At frame 663, an unidentified male wearing camouflage fatigues discharges what appears to be an AK-47 variant or similar assault rifle as an unidentified subject lying supine on the ground simultaneously reacts. At frame 767, the focal length of the camera changes resulting in a magnification X2. Analysis of the GoP pattern reveals that frame 767 is a P-frame, suggesting that this is not a scene transition/edit point, which would have produced an I-frame. Frames 804 to 816 were processed with an apparent velocity estimation and mosaic reconstruction filter to produce a still image of the individual previously described by a member of the Sri Lanka government's panel of experts, Maj. Bandara as wearing “a clean white shirt”. Upon closer examination of the image taken at closer range in the newly released video, the white shirt has visible red stains.



Frame 804 – 816 Apparent Velocity Estimation Calculated Mosaic Reconstruction



Frame 812 with Fourier transform of region of interest outlined (inset at top left)

The outlined region region of interest in Frame 812 was analyzed using a Fourier transform, which contains a random distribution suggestive of a natural, unaltered image rather than a high degree of periodicity associated with re-sampling found in deliberate forgeries. For a detailed discussion, see “*Statistical Tools for Digital Image Forensics*”¹⁶ by Alin C. Popescu.

¹⁶ <http://www.cs.dartmouth.edu/farid/publications/apthesis05.pdf>



Segment 3 – Frame 860
Unidentified Participant



Segment 3 – Frame 904



Segment 3 – Frame 911 Unidentified Shooter Partial Profile

Based on the progressive body count, the first three segments appear in reverse chronological order; the correct order would be Segment 3, Segment 2, Segment 1.

Segment 4 (Frame 999 – 1868): The camera records bodies lying in various positions on the ground, including one individual whose skull appears to have a large defect, revealing what appears to be an exposed flap of scalp and the interior of the cranium, with a large pool of red liquid underneath the head. Two sections of video were processed with an apparent velocity estimation filter, stabilized, and the stabilized frames averaged to obtain still images with video noise reduction. The consistency of features in all sequential images during both sequences demonstrates a uniformity of detail from frame to frame as the perspective changes that would not be generated artificially on video using widely available video special effects software such as Adobe After Effects.



Segment 4 Frame 1081 – 1103



Segment 4 Frame 1340 – 1356

A lone blindfolded female lying on top of a large pool of red liquid is also visible, with her panties pulled partially down; an unidentified male in uniform pulls a covering off her upper torso, revealing her bra lowered below her breasts with her hands behind her back. At frame 1009, the focal length of the camera changes resulting in a magnification X2. Analysis of the GoP pattern reveals that like the previously noted frame 767 in Segment 3, frame 1009 is a P-frame, again suggesting that this is not a scene transition/edit point, which would have produced an I-frame. From frame 1076 to 1080, and again from frame 1191 to 1205, an unidentified male in OD fatigues is visible pointing a camera phone at bodies. During this segment of video, a reflection of one of the participants is visible in a large puddle adjacent to the female body. This reflection conforms to the contours of the puddle.



Frame 1398



Frame 1398 Rotated 180 Degrees

Segment 5 (Frame 1869 – 2411): Based on the number and appearance of bodies present and differences in natural landmarks, this appears to have been recorded at another location. This segment begins by scanning from different perspectives a partially covered female, featuring closeup views of her breasts and genitalia, followed by three males. One of the male bodies is clothed with dark briefs and a white tank top t-shirt, the second is lying prone in a shallow ditch with his hands behind his back, and the third is nude with his hands behind his back, lying on the ground between the ditch and the female. This segment

concludes by panning back to the female. Frames 2141 to 2305 were processed with an apparent velocity estimation algorithm and the calculated apparent velocity was then used with a mosaic reconstruction utility to produce a panoramic still image of the included frames.



Frame 2141 – 2305 Mosaic Reconstruction Panoramic View

Conclusions:

In any forensic investigation, the discovery of new evidence provides an opportunity to reevaluate conclusions drawn from a previously examined, less complete set of evidence. Such is the case with this analysis. The video/audio file submitted for this supplemental analysis, SL1.3GP provides significantly more material for analysis. Unlike the first video file submitted for analysis (VideoDJ.3GP), this recording contains considerably more detail, including potentially identifiable images of some of the participants and apparent victims. The existence of five separate and distinct recorded segments within the file, one of which contains 542 frames of video identical to the previously released recording (VideoDJ.3GP) provides conclusive evidence that these files are the product of editing. The presence of metadata indicating processing with Philips software, along with confirmation that a Philips subsidiary, NXP Software has widely distributed software capable of editing video within the mobile device, without the need for an external computer, provides a highly plausible, logical explanation for two previously unresolved discrepancies with the originally submitted recording, VideoDJ.3GP.

First, the encoded date discrepancy: a video camera mobile phone with the NXP LifeVibes VideoStudio software installed would be capable of storing individual video recordings indefinitely. Any video edited with this software/feature would then be encoded with the date and time that the new, edited file was created, and would derive that date and time from the mobile phone's settings. Because these files would be generated by software integral to the mobile phone, they would logically be consistent with the technical attributes of a mobile phone original .3GP file.

Second, the white uppercase "A" against a red background present for the final 17 frames of VideoDJ.3GP: according to published information from NXP Software, VideoStudio provides the ability to add titles and graphics. It is quite plausible that the producer of VideoDJ.3GP added this text/logo at the end of the video segment, though only those responsible can explain its significance.

The fact that editing in any form has been applied to the recordings submitted for authentication will quite understandably generate skepticism or even suspicion. However, it is important to understand the distinction between the type of rudimentary editing possible on a mobile phone (that all available evidence indicates was used in this case) and the capabilities of a powerful computer based non-linear editing system with sophisticated filters and effects. At most, integrated mobile phone editing software could delete evidence that occurred before or after the remaining video, or reorder video sequences; this is of course potentially destructive and misleading. However, editing software this limited could not possibly create even a crude simulation of the subject matter present in these recordings, much less a realistic simulation. While there is no way to know what may have been deleted before or after the video segments, the remaining intact recorded video is accurate based on all available evidence.

This analyst again repeatedly requested access to the device purportedly used to make the recordings for the purpose of comparing photo response non-uniformity and image sensor noise profiles present in the recordings submitted for analysis with exemplar recordings generated by the device. To date, the device has not been made available, nor has information regarding the specific make and model of the device. The identity and status of the person(s) who created the video files is unknown to this author. In the absence of the actual device, authenticity of the recordings cannot be determined to an absolute certainty. Notwithstanding the inability for any analyst to make an absolute definitive determination under these circumstances, the results of testing procedures and content analysis are persuasive that the events depicted on the available video/audio recordings are authentic.

Acknowledgments:

This author is extremely grateful to Lenny Rudin, PhD, forensic imaging scientist at Cognitech, Inc. for generously conducting a peer review with respect to theory and algorithms of video motion analysis and related image processing used in this analysis, and to Alex Dziemieszko, a LEVA Certified Forensic Video Technician, for providing a peer review of the methodology and conclusions contained in this report.

In the interest of full disclosure and disclaimer, Dr. Rudin's and Mr. Dziemieszko's participation were voluntary, using their own personal time and resources, and no official endorsement by Cognitech, Inc., LEVA, or any other organization should be inferred.

C. REPORT OF MR. DANIEL SPITZ - A FORENSIC PATHOLOGIST

February 21, 2011

Dear Mr. Heyns,

Pursuant to your request, I have reviewed additional videos depicting alleged executions in Sri Lanka by Sri Lankan soldiers.

Subsequent to my review of these materials, it is my opinion that the execution shootings shown in the videos represent real executions of multiple individuals secondary to close range gunshot wounds using high powered assault rifles.

The video begins with the close range shooting of a man who is naked, blindfolded and bound with his hands behind his back. At the time of the shooting the man is motionless and is lying on the ground, predominantly along his right side. As the rifle is fired, gases are noted to emerge from the muzzle of the gun. The man appears to be shot in the left thigh and at the time of the shooting shows reactive/reflexive movement immediately after he sustains the wound. It is unclear what, if any wounds he had already sustained at the time he is shot in the leg.

In the area adjacent to this victim are several other individuals all of whom appear blindfolded and/or bound. Immediately prior to this shooting, you can see another apparent victim fall into view at the far left side of the video. While it may be that this represents another execution shooting victim (gunfire is heard in the background audio), the limited view of this individual does not allow this definitive determination.

The video continues with a naked, bound and blindfolded man being aggressively put on the ground in a seated position. He is kicked in the back by a soldier who uses the heel of his boot. Seconds later, he is shot in the back of the head at close range with an assault rifle. As the gun is fired, you can see the discharge of gases and smoke from the muzzle of the gun. As the victim is shot, he immediately collapses to his right and blood begins to pool on the ground under and around his head. Several seconds later, the victim's body rotates back to the left secondary to the effects of gravity.

At the time of this shooting, another apparent victim who is on the ground directly in front of the victim being shot in the head shows movement of his left lower extremity. The movement consists of rotation of the left lower extremity from an abducted position to a point where his knee is nearly vertical. Immediately thereafter, the knee rotates laterally back to its original position.

It was previously unclear as to what accounted for the movement of this individual's left leg, however, it appears that when the victim is shot in the back of the head that the bullet exits the front of this head or face and continues forward to involve the other person. The trajectory of the bullet is such that the individual's left leg would be directly along the wound path and thus be subjected to being struck after the bullet perforated the other victim. Although the individual appears motionless immediately prior to the shooting, it is unclear as to what injuries he may have already sustained prior to the projectile striking his left leg.

At several times during the video, the camera pans to the left and back to the right to show many apparently deceased victims, most of whom have blood evidence around their bodies. The other apparent victims are mostly naked, blindfolded and have their hands bound. Several of the victims are naked females with their genitalia exposed. One such female victim has her face exposed with her eyes and mouth partially open. The right and left eyes

have abnormal pupil locations with the right eye having a more lateral gaze than the left. Additionally, the right eye appears to be open to a slightly greater degree than the left. While these findings are not proof of death, they are common findings in deceased persons. The blood emanating from her nose and mouth is also a common finding in severe head trauma deaths. Blood evidence consistent with being caused by gunshot wounds to the head are noted on and around many of the bodies.

Specifically, there is a clothed victim who has a gross deformity to his face, consistent with being caused by being shot in the head with an assault rifle. The blood evidence under and around his head and upper torso is what you would expect after sustaining a gunshot wound of the head.

Continued video footage shows a second naked, bound and blindfolded man being put on the ground and shot in the back of the head at close range with an assault rifle. As the victim is shot, he immediately collapses backwards, but appears to tense his body with contraction of his torso and lower extremity musculature. A large gush of blood pours from the back of his head and onto the ground behind his body. Over the next several seconds, his muscles relax and his back and head then come in complete contact with the ground. Blood continues to saturate the area under and around his head. This reaction is quite typical of an individual who sustains a gunshot wound to the head. The initial response to such trauma is often intense contraction of the skeletal muscles followed by relaxation over the next several seconds.

The video shows a fourth shooting of a naked individual who is lying supine with a blindfold around his face. The video is taken at a further distance than the other three shootings. The individual appears to be shot in the head and shows subtle body movement at the time of the shooting. Due to the video being taken at a distance, blood evidence that occurred following the shooting cannot be evaluated. It is unclear as to what injuries this person may have had prior to the shooting shown in the video.

The camera again pans across a field to show numerous apparent victims who are mostly naked, blindfolded and bound. The camera focuses in on one victim who is lying supine with a blindfold loosely situated around his neck. His face and forehead show an obvious wound characterized by multiple scalp lacerations and extensive skull fractures which result in wide exposure of the cranial cavity. The wound is characteristic of being caused by a close range gunshot wound using a high powered assault rifle. The blood evidence around the body is entirely consistent with the wound that is seen.

Following my initial review of the video it was unclear as to why one of the apparent victims had his left lower extremity in an upright position with his knee flexed at near 90 degrees and his left foot flat on the ground. As previously indicated, under normal circumstances and without something maintaining his leg upright, I would not expect his leg to remain in this position if he were deceased. Review of the current video better shows the position of the leg and explains why it maintained in an upright position. Apparently when this individual collapsed, his legs crossed and thus his left foot is situated on the ground to the right side of his right leg. In this position, his left ankle is supported by resting against the outer aspect of his right leg. Thus his left lower extremity remains in a position that can be explained without any purposeful action or muscle tone.

In summary, the footage shown in this video appears authentic, especially with respect to the individuals who are shown being shot in the head and other areas of the body at close range by assailants using high powered assault rifles. The visible wounds, blood evidence and body movements are entirely consistent with what would be expected with gunshot wounds from assault rifles. Furthermore, the head wounds on two of the victims who are not actually shown being shot are characteristic of gunshot wounds caused by high powered assault rifles.

The two questions that existed following review of the initial video have been answered and explained by review of the current video. At this point, there are no inconsistencies and nothing to suggest that the current video is anything other than authentic.

Should you have additional questions, please do not hesitate to contact me.

D. REPORT OF MR. PETER DIACZUK - A FIREARMS EXPERT

Video analysis - Sri Lanka incident. Additional video

Report date: 18 February 2011

In response to a request on Dec 9th 2010 from Professor Christof Heyns, United Nations Special Rapporteur on Extrajudicial Executions, to prepare a firearms and ballistics report on the videotape that is alleged to show the execution of Tamil prisoners by members of the Sri Lankan armed forces, I have prepared the following document. The views and opinions expressed herein are my own and do not necessarily reflect those of the College.

The video in question was initially received by traditional mail from Mr Jeff Spivack on 26-January-2011 burned onto a DVD, along with stills and short segments that have been stabilized to facilitate critical review. The DVD bears the title "SL1.3GP"

My expertise within the broad field of forensic science includes more specifically the scientific examination of firearm evidence and crime scene reconstruction. In addition to my education and training in forensic science, I have worked as a Range Officer and am a Certified Firearms Instructor. I am neither a medical examiner nor a video / digital imaging analyst and thus, for interpretations and conclusions as to those aspects of the submitted video recording, I defer to the experts in those respective disciplines.

Using experiments conducted as background information for a prior report to the United Nations Special Rapporteur on Extrajudicial Executions, which involve the same class of firearm as depicted in this case, I have reviewed those experiments again to aid in my interpretation and conclusions for this assignment.

Overall conclusions: from personal experience and the videos that I took of an AK-47¹⁷ ¹ class rifle being fired from both hip and shoulder, I am convinced that the minimal recoil seen in the video submitted to me was accurate for an adult male holding and firing a Kalashnikov class firearm.

A total of five video segments were received, the first three containing views of firearms being discharged; the fourth and fifth segments containing views panning the overall area with no on-camera discharges.

Analysis of the three specific video clips for authenticity, in chronological order as received (note that the frame numbers referenced below are from each individual video segment, not the frame numbers of the video as a whole):

¹⁷ The AK-47 (Avtomat Kalashnikova 1947) rifle was designed by Russian soldier / military firearm designer Mikhail Kalashnikov and adopted in 1947. Since its adoption by the Soviet military, it has undergone several modifications and variations. Estimates of up to 100 million manufactured to date exist, along with its appearance in dozens of countries around the world (Kahaner, 2007, "AK-47"). See appendix for photograph of an AK-47.

First video sequence showing uniformed soldier with mustache in mono-color fatigues and cap. Frame 8 – possible hesitation as soldier appears to thrust his rifle a few inches (several centimeters) toward the ground where an individual is lying, but no evidence of discharge. Later, in frame 19, his firearm discharges, just as he again thrusts the rifle toward the individual for a distance of a few inches. Perhaps this is done in anticipation of the recoil as a result of discharge. (In the shooting community, this is referred to as “flinch”). Smoke ejects from the muzzle in accordance with discharging a cartridge. Frames 20 and 21– smoke dissipates as it moves away and to the right of the shooter. In frames 28, 29 and 30, and again in frames 54, 55 and 56, the rifle is presented to the camera and has the characteristics of the Kalashnikov class of assault rifle. This implies that the ammunition would be 7.62 x 39 mm or 5.45 x 39 mm. This segment ends at frame 69.

Second video sequence showing uniformed soldier. This video clip appears the same as the video that was submitted for assessment of authenticity in 2009. My observations and opinions of this segment have not changed since my last viewing, and thus I have inserted my original writing verbatim. The firearm used appears to be a Kalashnikov class. This implies that the ammunition would be 7.62 x 39 mm or 5.45 x 39 mm. At the moment of discharge of the firearm, at frame #41, it moves rearward, as do the shooter’s arms, as seen clearly by both of the elbows suddenly jerking rearward and then forward again in the next frame, #42. When the firearm moves rearward as a result of the recoil from discharge, it appears to move in-line with how it was held, and then forward again in the same linear fashion. This is consistent with how a shooter experiences recoil and recovers after firing the shot¹⁸². Accompanying the discharge is the plume of high-pressure gases that is expelled from the muzzle, visible to the left and lower left of frame #41. Both the recoil¹⁹³ described above and the high-pressure gasses (commonly referred to as *muzzle blast*) generated at discharge are indicative of firing live ammunition. Although the use of blank ammunition^{20 4} will produce gasses and slight recoil, neither is as forceful as the use of live (containing a bullet) ammunition.

The victim’s head lurches forward (away from the muzzle) at that same moment, in frame #41. This lurching forward is so sudden that the excess cloth used to tie the blindfold is seen to move from what was merely gravity-positioned, to an airborne position. Coinciding with the firearm discharge and forward head movement of the person seated in the

¹⁸ (Whelen, 1946, “Small Arms Design and Ballistics”, vol. 2 ch. 3).

¹⁹ The recoil calculation includes the weight of the bullet as a significant factor contributing to the rearward movement of the firearm at discharge (also included is the weight of the powder charge, but the powder weight is considerably less than the bullet weight and thus contributes less to the final figure). Furthermore, the presence of the bullet being pushed through the barrel creates internal pressures not attainable with a blank cartridge.

²⁰ Blank ammunition should not be regarded as “safe” or “harmless” to use at human targets, especially at close range and where unprotected by clothing. There are several types of “blank” cartridges, depending upon how the powder is kept in the case. Some cases are crimped closed by squeezing the brass together at the top (W.D de Hek, 1995, “Military Cartridges Part 1”) while others use different types of plugs, such as wax, cotton, paper, cardboard, plastic etc. In the latter, the plugs become projectiles capable of causing injury as well. Each will allow a different amount of pressure to develop inside the barrel; the more pressure, the greater potential for injury. Injury and even death have been documented from the close range discharge of blanks from military rifles (Di Maio, 1985, “Gunshot Wounds”).

foreground is the sudden body movement by the person lying directly in front of him. The energy and ability of the bullet ²¹⁵ from the Kalashnikov class of firearms to pass through considerable obstacles is well known. Although not fully within my area of expertise, it is quite reasonable that a bullet could pass completely through one person and hit another. I can state from experience that bullets fired from an AK-47 firearm, using 7.62 x 39 mm full metal jacket ammunition, have gone through 6 inches of wood consistently.

The low resolution does not allow me to observe a bullet impact on the victim(s). The direction of ejection of the spent cartridge case is not visible because of the relative positions of the camera to the shooter, which effectively blocks the field of view of that direction.

Third video sequence with soldier in camouflage uniform. In frame 40 the soldier's rifle is pointed in the direction of a blindfolded individual lying on the ground, and then repositioned slightly as evidenced by the muzzle moving upward in frames 41, 42 and 43, then again pointed toward the same blindfolded individual. At frame 50 the rifle appears to discharge once, based on the rearward movement of the rifle in the soldier's hands from recoil. This soldier, and hence his rifle, is too far from the camera to discern any muzzle blast and the soldier's body is blocking the view of the area where a spent case would be ejected. The only part of this soldier's firearm that is visible is the front sight assembly and the muzzle area of the barrel. Both are consistent with the front sight assembly and muzzle area of the Kalashnikov class of firearms.

Summary:

The three video sequences reviewed accurately depict firearms being discharged, and the recoil observed is consistent with the firing of live ammunition.

I have not rendered opinions of either the wound pathology or the military uniforms, as neither are within my expertise.

The conclusions reached are based upon the information available at this time, and are subject to modification if additional information is presented.

Appendix:

²¹ 7.62 millimeter, 122-grain full metal jacket bullet traveling at a muzzle velocity of 2330 feet per second, 1470 foot-pounds muzzle energy (Barnes, 2000, "Cartridges of the World"). See appendix for photograph of 7.62 x 39 mm ammunition.

Photograph one- AK-47 with magazines. This model has the fixed wooden stock, whereas those in the video sequences have folding metal stocks.



Photograph two- ammunition for the Ak-47 rifle, 7.62 x 39 mm.



E. REPORT OF MR. GRANT FREDERICKS, A FORENSIC VIDEO*

ANALYST

Analyst's Background

I attained an undergraduate degree in television broadcast communications in 1982 and have been continuously involved in the video and imaging industry for the last twenty-eight years.

I am a Forensic Video Analyst with extensive experience in the recovery, scientific examination and evaluation of recorded video and audio information involving criminal and civil investigations in the United States, Canada and in the United Kingdom. I have been continuously active in this science since 1984.

As a Forensic Video Analyst, I have processed thousands of videotapes and computer discs containing digital multimedia evidence for both criminal and civil cases. I have been providing expert testimony as a Forensic Video Analyst since the early 1990's. In the past ten (10) years I have provided expert testimony in the field of Forensic Video Analysis more than eighty (80) times in US and Canadian courts at all levels. I have testified as an expert in Forensic Video Analysis in Washington State, Oregon, Idaho, California, Nevada, Colorado, Arizona, Iowa, Illinois, Missouri, Massachusetts, Pennsylvania, Michigan, Maine, New York, Texas, Florida, British Columbia, Alberta, Manitoba, and in the Yukon Territories.

Since 1999, I have been the Principal Instructor for a series of Forensic Video Analysis courses offered by the Law Enforcement & Emergency Services Video Association (LEVA), a non-profit organization that has trained more than 1800 law enforcement video analysts from throughout the world.

I am the Team Leader for LEVA's Forensic Video Analysis Certification Program.

I am also a contract instructor of Forensic Video Analysis and Digital Multimedia Evidence Processing for the FBI National Academy in Quantico, VA.

I am the Digital Video Advisor to the International Association of Chiefs of Police for its In-Car Video Project and for its Regional Forensic Video Processing Lab Project, which is funded by the US Department of Justice.

I am currently an adjunct instructor for the University of Indianapolis, and each year I teach approximately six (6) one week long courses for the University in various disciplines involved in the science of Forensic Video Analysis, including the use of advanced imaging technology. Students are serving video analysts primarily from police agencies in the US, Canada, the UK, Australia and Asia. Each of the courses focuses on digital video and analog video engineering principles and on the application of proper scientific methodologies for processing digital multimedia evidence, including scientific techniques used to accurately convert time-lapsed video into real-time video for synchronization of separately recorded video sources.

One of the courses that I teach at the University of Indianapolis is entitled Photographic/Video Comparisons, which focuses on the identification of vehicles, clothing and weapons captured to digital and analog video recording sources. I have taught this

* The format of the report has been modified to comply with United Nations editorial rules.

course in Canada, at the British Columbia Institute of Technology and in Indianapolis for each of the last nine years. This course is accredited by the University of Indianapolis and by the Law Enforcement & Emergency Services Video Association, which recognizes the course in its Forensic Video Analysis Certification Program. I have also taught this course in the United Kingdom.

A significant element of the Photographic/Video Comparison course material, and of the other courses I teach, involves the science of Reverse Projection. Reverse Projection is the scientific process of obtaining accurate measurements and making accurate observations from photographic and video images. Reverse Projection has been used among imaging scientists, investigators and in United States courts regularly for more than forty years as a tool to reproduce crime and accident scenes in order to conduct measurements and to make other accurate observations.

Each of the courses that I teach focuses on reflection of light, pixel tracking, digital compression technology, color measurement/analysis and on digital and analog artifact (error) identification for the sole purpose of ensuring the accurate interpretation of video evidence. Since each of the signal and digital components could impact the meaning of the images, the majority of testimony that I provide includes a narrative explanation of the events captured to the video recording system.

I am a former Police Officer with the City of Vancouver Police Department in Canada where I was the head of the department's Forensic Video Unit.

Work Request

On February 3, 2011, I was contacted via e-mail by Professor Christof Heyns, United Nations Rapporteur on Extrajudicial, Summary or Arbitrary Executions, in regard to digital video recordings that are alleged to show Sri Lankan soldiers executing a number of people by gun fire. I had first viewed this video on October 24, 2009, after being contacted by London Times reporter Mr. Rhys Blakely, of The Times Mumbai Bureau. In 2009, Mr. Blakely requested that I examine the video to determine if the video was authentic or if it had been manufactured, falsified or edited. The first video is call *massacrevideo.3gp* and is one minute and seventeen seconds long.

On February 28, 2011, Professor Heyns requested that I examine a second video and provide a report regarding the authenticity of both videos. The second video is called *SLI.3GP* and is five minutes and twenty-five seconds long.

On March 4, 2011, I received a letter via e-mail from Professor Heyns with a specific written request to assist "with his investigation into the content and authenticity" of the video.

Items for Examination

Item #1 – named *massacrevideo.3gp* is a 1.6MB .3gp video and audio file, received from Mr. Rhys Blakely on October 24, 2009.

Item #2 – named *SLI.3GP* is a 7.5MB .3gp video and audio file, received from Mr. Orest Nowasad, Chief Civil and Political Rights Section, Special Procedures Branch, Office of the High Commissioner for Human Rights

Tools Used

- AccessData FTK Imager
- Avid Media Composer 5.03
- QuickTime Pro
- Photoshop CS4
- Avihex253
- SMPlayer 0.6.0
- GSpot v2.70a
- VirtualDub
- VLC 1.1.5

Summary of Findings

Item #1 is an exact copy of a portion of Item #2. Item #2 contains five segmented recordings, where each segment is an unedited and accurate depiction of what occurred in front of the camera. The segments do not appear in chronological order, indicating that they were compiled into a single video file at a later date and their chronological order was mixed.

Examination

A technical examination of Item #1 and of Item #2 was conducted in an attempt to determine how each video was produced. Both videos contain the same text header information at the beginning of the HEX string:

Item #1: *....ftyp3gp4....3gp4.*

Item #2: *....ftyp3gp4....3gp4.*

Both videos contain the same text footer information at the end of the HEX string:

..vmhd.....skipPHILIPS SW - VSS 2.2.0

..vmhd.....skipPHILIPS SW - VSS 2.2.0

The header information is consistent with text associated with cell phone recordings. An examination of the CODEC used to record and play back both videos shows that the CODEC is an H.263 compliant video (3GPP). Both videos were tested with QuickTime, GSpot and VLC and were found to be using the H.263 CODEC.

Additionally, the pixel matrix of both videos is 176 x 144 (176 pixels on each of 144 lines of video). Each image in both videos is produced using 25,344 pixels.

The audio CODEC for both videos is AMR Narrow band (samr). The audio sample rate for both videos is 8000Hz, with 32 bits per sample.

The average frame rate for Item #1 is 7.247035 frames per second.

The average frame rate for Item #2 is 7.415818 frames per second.

The H.263 video in both items employs Index frames as reference frames and Predictive frames in order to take advantage of compression techniques where motion, and other

features in sequential images can be duplicated or estimated without producing substantially new data in each image. The frames combine to produce a complete and interdependent Group of Pictures (GOP). In both videos, the completed GOPs start with one Index frame and are followed by ninety-nine Predictive frames.

Item #1 is 01:14.646 (one minute, fourteen and a half seconds) long. It contains five complete GOPs of 100 frames. The final GOP contains forty-one images. The last GOP is shorter because the recording stops prior to the end of the 100 frame GOP sequence.

Item #2 is 05:24.082 (five minutes and twenty-four seconds) long. It contains twenty-one complete GOPs and five shorter clips that end before the end of their GOPs because their lengths are shorter than 100 images.

A study of the activities within the scenes of each segment shows that the segments in Item #2 appear out of chronological order on Item #2, as detailed later in this report.

As stated earlier, the pixel matrix of both items is 176 x 144 pixels. The encoding of the images employs an 8 x 8 block MPEG structure with twenty blocks counted left to right in the image and eighteen blocks counted from top to bottom. As motion is detected in the Predictive frame segments, motion vectors can be tracked and displayed on each image. Tracking motion vectors helps to establish continuity from image to image in a scene.

The GOP structure and the motion vectors of both videos were compared and were found to be technically identical in the manner in which they were produced and are displayed. Item #1, in its entirety with all motion vectors, blocks, pixel count and all artifacts intact, is repeated exactly within Item #2. Therefore, this examination focuses on the contents of Item #2.

Item #2 contains 2411 images.



Victim #1 Victim #2

The image to the left is the first image (frame 0) in the video. It has been enlarged by 200% in this report, revealing the compression artifacts.

The video starts with the sound of the conclusion of a gunshot. The gun was fired a fraction of a second before the camera was turned on. In the next image, a male is seen falling to the ground at the left side of the image.

In the first few images, a male dressed in a soldier's uniform is holding a cell phone in his right hand. The camera side of the cell phone is facing another soldier whose weapon was directed at a male who is falling to the ground just to the left and outside of the camera's view in this image (Victim #3).

This image shows two bodies on the ground (Victim #1 and Victim #2). Neither body is moving.

The soldier points his firearm toward the body closest to his feet (Victim #2). His gun is fired. The camera records a loud gunshot noise and the video shows motion blur at the barrel of the weapon. The motion blur indicates the weapon moved quickly at the moment of the shot. The motion blur and movement is consistent with the motion at the end of a weapon when a shot is fired.

The soldier points his firearm toward the body closest to his feet (Victim #2). His gun is fired. The camera records a loud gunshot noise and the video shows motion blur at the barrel of the weapon. The motion blur indicates the weapon moved quickly at the moment of the shot. The motion blur and movement is consistent with the motion at the end of a weapon when a shot is fired.



Cloth in motion

Victim's head in

Debris moving upward

The shot is fired at frame 18.

Victim #2's head and body move at the same time as the shot is fired. Debris from the area of the man's head moves upward and to the left.

A cloth blindfold, wrapped around the head of Victim #2, moves upward with the debris. The movement of the cloth is caused by the motion of the debris, indicating the force of the projectile leaving the weapon.



Motion vector detection is used to demonstrate the motion of the victim's head and the motion of the cloth.

The white arrows and white dots are graphic displays of the motion. The arrows indicate that the camera motion is slightly right to left in direction.

The victim's head is in a downward motion.

Victim #4 and #3 are visible on the ground



The male who fired the shot is depicted to the left and below in image 63.



The first video sequence is 70 images long and lasts just nine seconds (the first image is 'Image 0').

The men on the ground in the background are Victim #1 and Victim #2.



The victims on the ground are identified as **Group A** in this report. Victim #1 is crouched forward on his knees. Victim #2 is rolled onto his right side. Victim #3 and Victim #4 are on their backs.

All men are blindfolded and their hands are bound behind their backs.

This is image #69 and is the last image in the first sequence.



Image 70 is the beginning of the second sequence. The events in this sequence occurred prior to the events shown in sequence one. The sequences are not in their chronological order in Item #2.

This sequence is identical in every respect to the video depicted in Item #1.

A man in uniform places a blindfolded man (Victim #3) on the ground.



A soldier with a gun is standing in the foreground. This is a different soldier than the one depicted with the gun in Sequence One.

Image 89, shows the first soldier bringing the heel of his foot down with force onto Victim #3's back as the gunman steps forward.

The body of another man (Victim #5) is seen at the feet of Victim #3.



The male, whose hands are bound behind his back, turns to his left toward the male approaching with the gun.



Image 110, shows a recoil of the weapon as the sound of a shot is heard.

The top of Victim #3's head changes shape as gases from the weapon or debris are visible moving away from his head.

The weapon is pointed at the man's head. Victim #5, who is motionless on the ground, is also in the line of fire of the weapon. When the shot is fired, Victim #5's body moves. The video does not show if Victim #5 was struck by a projectile.

Victim #3 falls to his right as the gunman walks away.



The shooter is depicted at the right of Image 117 as he walks away from Victim #3, who is falling to his right.



The camera shows that Victim #3 slowly rolls to his back. The camera pans to the left, revealing two other males on the ground.

All males are naked, bound with their hands behind their back and are blindfolded.

Victim #6 shows a bleeding wound to the upper right area of his back.

Victim #3

Victim #6

Victim #5



Victim #8

Victim #7

Victim #5

Victim #6

The camera continues to pan to the left. Image 227 shows Victim #6 on the ground on the right side of the image. Victim #5's left leg is also partially visible.

Two other men are seen on the ground to the left. Victim #8, dressed in a white shirt appears to have a significant head wound with what appears to be blood on the ground under his head. Victim #7 is close to Victim #8's feet.



Victim #12

Victim #11

Victim #10

Victim #9

Victim #8

The camera continues to pan to the left revealing additional bodies on the ground. Image 247 shows four naked bodies; at least three are men. A blood-like substance appears to be at the head of two of the men.



The camera pans back to the right to the position where Victim #3 is on the ground. Image 339 shows the same soldier who applied the stomping motion to Victim #3 in image 89, leading a naked, blindfolded and bound man to a position on the ground next to Victim #3. The soldier is using a long article connected to the man's hands, to direct him into position. This male is identified in this report as Victim #4.



The soldier steps backward and aims his weapon at the head of the male.

The sound of a shot is heard; the gun recoils and the left side of the man's head changes shape. A white and red substance pours from the man's head as he falls backward to the ground.

Victim #4



Injury to head



Image 570, shows the resting position of Victim #4 next to Victim #3 and Victim #6 .

Blood continues to pour from Victim #4's head wound.

During this sequence, a significant number of shots are heard being fired a short distance from the camera.

An aligned montage of three images from Sequence 2, shows victim's #3 through #12 on what appears to be a dirt road. These victims, with the addition of Victim #4, are identified as **Group B** in this report.



Victim #4 is shot while seated between Victim #6 and Victim #3 after this montage was recorded.



Segment 3 starts at image 612.

This segment was recorded prior to the events depicted in Segment 1 and Segment 2. This video shows the same area where **Group B** bodies are seen, but Victim #3 and Victim #4 are not in this sequence and the blood from Victim #4 is not on the ground. This sequence was recorded prior to the victims depicted in Group A being shot.



This sequence is out of order in Item #2.

Image 662 shows the soldier who shoots Victim #4 sometime later, as he points his weapon at Victim #5.

Victim #5 is moving his head. The sound of a shot is heard. The gun recoils and Victim #5's body moves. The soldier then walks out of the camera's view to the right.



The camera pans to the left to reveal some of the bodies of **Group B** on the ground.

Image 765 shows a wider image. Image 766 below, shows a closer image of the same scene.

An examination of these back to back images shows that both are Predictive images that flow one to the other. An Index frame is not used at this location in the GOP, indicating that the camera was not stopped. Additionally, the motion vector analysis shows that Image 766 is a direct 'descendent' of Image 765 within the same GOP.



Also, the exact center of Image 765 is also the center of Image 766, indicating that the camera operator did not move at that the zoom was instant.

It is clear that the camera used to record this segment has an ability to jump to a 2X zoom. The zoom appears to be an optical zoom, since digital zoom artifacts are not present.



The camera continues to pan around the area where **Group B** is depicted.

Image 862 shows a uniformed soldier holding a cell phone in a manner consistent with video recording.



Segment 4 starts at image 998.

This sequence also shows the area of the **Group A** and **Group B** bodies.

Another victim is visible on the ground at the bottom left of the image.

The additional body is Victim #13.

Image 1008 shows a zoomed in image of the victims.

For reference purposes, the body positions are identified.



As the camera pans to the left, image 1054 shows the right shoulder of a soldier's uniform. The uniform has an insignia that appears to designate a military rank.

This soldier is carrying a weapon under his right arm.



The camera operator moves behind the soldier with the rank designation on his uniform and Image 1079 reveals the soldier's left hand. He is holding a cell phone and is pointing it at a male, identified as Victim #13. This victim appears to be young and has a significant head wound.

This victim is located close to Victim #2.

Victim #14 is depicted to the left of Victim #13.

The person operating the cell phone has a short sleeved shirt. The person operating the cell phone in Image 862 has a long sleeved shirt. Either the two men were using the same cell phone camera or multiple recordings were produced.



The camera continues to pan up and to the left, revealing the body of a female. This is Image 1131.

This is Victim #14. Her left foot is approximately two feet from the head of Victim #4.

This video was recorded after Segment 3 was recorded.



The camera continues to record uninterrupted as it pans to the right, recording images of the victims. The camera pans back to the left.

Forty seconds after Image 1131 is recorded on the previous page, Image 1424 to the left is recorded. A soldier is moving the woman's clothing to the side, revealing her naked body.

The victim's underwear is pulled down to her thighs.

The soldier then pulls her upper garment aside revealing the woman's breasts. The woman's bra was already down at her stomach prior to the garment being moved aside by the soldier.

The woman's hands are behind her back and she is blindfolded. A large amount of blood appears to be on the ground under her head.

A number of male voices are heard during this recording. Some laughter is heard.



The woman is Victim #15 in the video sequences.

The next segment contains images of additional bodies, although none appear to be the same bodies as those listed earlier in this report.

Segment 5 starts with Image 1868 and shows the body of a partially naked woman. The woman's hands are behind her back. Her underwear is pulled down to her right thigh. The camera pans around the body, focusing on her genital area.



The camera continues to record as it pans to the right.

Approximately three feet from Victim #15 is a male (Victim #16), who's head is leaning toward a shallow, freshly dug hole in the dirt.

This is image 2148.

This male is partially clothed with his hands are bound behind his back.



The camera continues to pan to the right, revealing the other side of the hole. Victim #16 is visible face down in the hole. He is located approximately four feet from Victim #15.

Victim #16 is blindfolded and his hands are bound behind his back.



The camera continues to pan downward. Approximately six feet from Victim #16 is the body of a naked male. This is Victim #17. He is also blindfolded and his hands are bound behind his back.

The last image on the video is Image 2410.

No other victim's are depicted.

Opinion

A visual comparison of the blocks, macroblocks, pixel dimensions and audio of Item #1 and of Segment #2 of Item #2 shows that they are identical. The digital information of both files was also examined in detail. A comparison of a large HEX string of Item #1 to the HEX string of Segment #2 of Item #2 reveals a significant block that is virtually identical. Specifically, a block of 3,074,252 ANSI text characters, representing all of the video and audio information in Item #2, was matched to a block of 3,074,252 ANSI text characters in Item #2. A comparison of the characters shows that all but 270 characters (1/11,386th of the block) are identical. The small variance is not caused by an altering of the file, rather it is likely due to the process of repacking the contents of Item #1 into Item #2. I have therefore formed the opinion that Item #1 is an exact transcoded version of Segment #2 in Item #2.

An examination of the shooting scenes and the placement of the victim's bodies, reveals that the segments contained on Item #2 are presented out of chronological order within the Item #2 file. The first four segments were actually recorded in the following chronological order:

- Segment 3,
- Segment 2,
- Segment 1,
- Segment 4

Despite the presentation order of the segments, the segments all represent the same overall event.

Segment 5 is dissimilar to the other segments in that the ground appears less saturated and none of the victims are visible in the other four segments. Also, none of the killings are actually contained in the recording. It is likely that this segment was recorded to the same device, but at a different time than were segments 1 through 4.

As a result of finding that the video segments are presented out of order in Item #1, I have formed the opinion that Item #1 has been edited/compiled together. However, each

segment is intact and no editing is present between the beginning and end of each individual segment. The images within each segment are contiguous and unedited.

As noted in the file header and footer information of the digital files (page 7 of this report), the footer shows the following string:

..vmhd.....skipPHILIPS SW - VSS 2.2.0

VSS stands for Visual Source Safe 2.2.0. This is a software versioning control used by software development companies, such as Philips.

My research in this area shows that 'Philips Software', now 'NXP Software', developed an editing product called '*Philips Lifevibes Camcorder Pro -- software version 2.02*'. The software was written exclusively for the Nokia 6600 - 6620 cell phones. It allows a Nokia cell phone user to record long segments of video to the cell phone itself, via an internal flash card inserted into the phone. Normally, an off-the-shelf Nokia cell phone of that vintage has a limitation on the length of video that can be recorded. The software allows the Nokia cell phone to prolong a recording event. The string, listed above, is found at the end of a HEX string for each Nokia cell phone recording using this software.

The Nokia 6620 cell phone was developed as a 'Smart Phone' for the North American market. However, the Nokia 6600 Smart Phone was created in 2004 and was sold heavily in the Indian phone markets. The 6600 has video and audio capability which is limited to the recording of 10 second video and audio clips at 640 x 480 pixel dimensions. The phone takes still images at 176 x 144 pixels, which is the same size as the pixel dimensions of the questioned video. As mentioned above, the Philips software was designed to extend the media recording capabilities of this specific phone and to produce 176 x 144 pixel video clips. Further research indicates that this phone was sold as the cheapest smart phone available in Sri Lanka.

My research shows that a branch of Philips (an Indian software developer) produced a device that empowered a Nokia cell phone to produce extended video clips with exactly the format, codec, pixel dimension, and audio stream that is present in the questioned recording.

When recording video to a cell phone, the start and stop function of the recording forces the unique packaging of each clip into its own segment, each with a header and footer, so that the file can be played independently. The Philips Lifevibes Camcorder Pro software allows clips to be edited/compiled together and in any order. The clips can be played on the phone or output to a storage device to be edited. The clips are not 'transcoded' during editing. Transcoding is the process of changing the format from its original form to another. The clips are left intact and are not altered when compiled or edited. Commonly, with MPEG video, editing at a Predictive frame is not possible with this level of software. Edits can only start at reference frames (Index frame). This is why each segment in Item #2 starts with an Index frame.

As noted in this report, at least one other, possible two other cell phones were recording video during the shootings. As a result of my observations and research into the source of the footer information contained in the HEX file of Item #2, I have formed the opinion that a cell phone was used to record the video and audio in Item #2 and that it was compiled with the Philips software likely to a Nokia cell phone.

Regarding the injuries to the victims: As articulated earlier in this report, a number of the victims are shot at close range with high powered weapons. Immediate to the sound of the shots being fired and the recoil of the weapons, the victims' bodies reacts violently, some

suffering visible disfiguration of the skull and instantaneous open wounds with blood and brain matter pouring from the wounds. Additionally, gases, as the projectile leaves the weapon, are visible on the video. It would not be possible to fabricate the nuances of these observations within the limitations of MPEG4 technology, with the limited lighting available, with the lack of production and support equipment and in such a remote environment. There are no special effects props visible in the images and no digital effect artifacts present in the video stream.

Additionally, the audio recording is produced contiguous to the video images. The voice of the person operating the camera is appropriately over-modulated, when compared to voices and activity occurring further from the camera. Gun shots are heard close to the camera and they appear natural, given the environment and they are consistent with the sounds of the guns that are used during the executions.

The natural sound of wind can be heard over the other noises, especially when the camera is turned to the right, from the perspective of the operator. In a number of images, the grasses seen on the ground are blowing from right to left. When the camera pans to the left, the wind noises are less frequent or cannot be heard because the microphone is not pointing toward the wind. Of note is that there are no wind sounds during Segment #5, which would suggest that this segment was recorded on a different day, or in a different area, than were Segments #1 through #4.

Giving consideration to my research and to the observations listed in this report, I have found no evidence to suggest that Item #2 contains fabricated images, or audio elements. The execution scenes contain no 'virtualization' (computer generated effects). I have therefore formed the opinion that Item #2 is authentic in that it accurately portrays what it purports to show.

Dated this 9th day of March, 2011 in Spokane, Washington, USA.



GRANT FREDERICKS

2. CORRESPONDENCE RELATING TO THE INVESTIGATION

Allegation letter send on 15 December 2010 by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding video footage which allegedly documents members of the Sri Lankan Army committing extrajudicial executions.

The footage shows the bodies of about nine men lying dead on the ground. It further depicts, what appear to be, members of the Sri Lankan Army shooting and killing at close range two bound and blind-folded men. The video footage also shows the naked bodies of several women and some of the soldiers are seen removing the clothes covering their bodies. The footage captures the faces of some of the perpetrators and shows someone in uniform recording the incident via a mobile phone.

The video footage appears to document the same incident which was the subject of communication between your Excellency's Government and my predecessor, Mr. Philip Alston. However, the new footage is longer than the previous footage and runs for about 5 minutes and 25 seconds. As indicated in previous communications, it is alleged that the killings took place during military operations in or around Kilinoch.

Your Excellency's Government had asked my predecessor to provide details of what should be investigated by indicating a date, or place, or both of the alleged incident. In September 2009, your Excellency's Government commissioned an investigation which disputed the authenticity of the video footage. My predecessor commissioned an investigation undertaken by three experts; together, these reports strongly suggested that the video is authentic and he called on your Excellency's Government to undertake an independent and impartial investigation into the alleged killings.

I take note of the investigations commissioned by your Excellency's Government which disputed the authenticity of the initial footage. However in light of the new video footage and without prejudging the accuracy of the information made available to me, I urge your Excellency's Government to conduct an independent, extensive and impartial investigation into the alleged extrajudicial executions documented in the new video footage.

The present scenario, with regard to which we have two conflicting results of investigations into the authenticity of the initial video footage, in my opinion, justifies that a new investigation be undertaken not only to determine the authenticity of the footage, but, if that is settled, also to identify the perpetrators whose faces are captured in the images and bring to justice those responsible. The investigation must accord with the guarantees established under international law and practice to ensure its independence and impartiality.

With regard to the willful execution of persons documented in the footage, I would like to refer to common article 3 to the 1949 Geneva Conventions which prohibits "violence to life and person, in particular murder of all kinds" of persons taking no active part in the hostilities or who have been placed *hors de combat*, including by detention. I would also like to refer to the obligations arising under human rights law. The International Covenant on Civil and Political Rights, to which Sri Lanka acceded on 11 June 1980, 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).

Under international law, the State carries the burden to investigate all reported cases of alleged human rights violations. In discharging this obligation international law requires that there shall be a thorough, prompt and impartial investigation of all suspected cases of

extra-legal, arbitrary and summary executions. (Principle 9: Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). Further, the General Assembly resolution on the mandate of extrajudicial, summary or arbitrary executions reiterates the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, while ensuring the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Human Rights Committee has noted in its General Comment No. 31 that “a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”

I would appreciate receiving information from your Excellency’s Government on measures that will be adopted to establish an independent investigation into the allegations raised in this communication including criteria for selection of the experts, the mandate and terms of reference, and results of the outcome. Further, I would be grateful to receive information on measures taken to identify the perpetrators and bring to justice those responsible.

My predecessor, Mr. Philip Alston, had indicated to your Excellency’s Government in a communication dated 28 August 2009, his wish to undertake a visit to Sri Lanka. I would like to renew the request that your Excellency’s Government extends an invitation to me to undertake an official visit to Sri Lanka. I would be most grateful if you could indicate dates on which such a visit might be convenient.

I would like to inform your Excellency’s Government that I have asked experts to study the new video and to comment on its authenticity. I will be happy to make their report available to you and would appreciate being given the benefit of access to the results of any similar studies taken on your side. I remain at your Excellency’s Government disposal with regard to any related questions or requests that your Excellency’s Government would wish to seek.

Note Verbale dated 7 February 2011

The Office of the High Commissioner for Human Rights presents its compliments to the Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office and other international organizations in Geneva and has the honour to transmit an Universal Serial Bus (USB), which contains the contents of a video footage under investigation by Mr. Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions.

Government reply dated 12 February 2011

The Permanent Mission of the Democratic Republic of Sri Lanka to the United Nations office and other international organisation in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the latter’s communication dated 7 February 2011 (received on 9 February 2011) transmitting an Universal Serial Bus (USB), which according to the said note “contains the contents of a video footage under investigation by Mr. Christof Heyns Special Rapporteur on extrajudicial, summary or arbitrary executions”, has the honor to inform the following:

It is a universally accepted position that an independent, extensive and impartial investigation (as requested by the Special Rapporteur in his communication to the Government on 15 December 2010) can be carried-out only on the basis of the original video footage being received and its authenticity being established by the transmitter of the same, in this case Channel-4, UK. Therefore, the Government of Sri Lanka (GoSL) is of the view that any claim of the material being the authentic original video needs to be

substantiated by detailed information regarding the nexus of transmission. In view of the foregoing, the GoSL would be pleased to be advised on the status of the USB transmitted to the Permanent Mission as containing the authentic original video, and if so, details which establishes this position.

In the communication dated 15 December 2010, the Special Rapporteur has also requested the GoSL to provide details of its own investigation i.e. criteria for the selection of the experts, mandate, and terms of reference etc. While the GoSL would keep the Special Rapporteur informed of the outcome of any investigation dependent on the above, in the interest of transparency and openness, the Government would be pleased to be advised on the parameters of the investigation being carried out by the Special Rapporteur and the modalities that have been adopted to that end, in the same context the request made to the GoSL by the seeking the aforementioned details.

Response of the Special Rapporteur dated 18 February 2011

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to General Assembly resolution 63/182 and Human Rights Council resolution 8/3.

I would like to inform your Excellency that as indicated in the communication addressed to your Excellency's Government of 15 December 2010, the investigation I am undertaking aims to determine inter alia the authenticity of the video footage. The contents of the video footage transmitted to your Excellency's Government are as received from Channel 4.

I would like to indicate to your Excellency's Government that in my opinion, a reading of international human rights law suggests that the burden of investigations into allegations of violations of right to life lies on the State and not for the entity or person who alleges to authenticate the alleged violation before an investigation can be undertaken. In this regard the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provide that "There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9). The Human Rights Committee has also observed in the case of *Umetaliyev and Tashtanbekova v Kyrgyzstan* that "the burden of proof cannot rest alone on the authors of the communication, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it". (Para. 9.5)

With regard to the parameters and modalities of my investigation I am pleased to inform your Excellency's Government that I am conducting a technical assessment to establish the authenticity of the video footage. The experts with whom I am working are Mr. Daniel Spitz, a forensic pathologist; Mr. Jeff Spivack; a forensic video analyst and Mr Peter Diaczuk, a firearms expert.

The finding of my assessment shall be provided to your Excellency prior to presentation to the Human Rights Council.

I wish to thank your Excellency's Government for its cooperation and I hope to continue the dialogue which is already established on the issues within my mandate.

Note Verbale dated 1 March 2011

The Office of the High Commissioner for Human Rights presents its compliments to the Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office and other International Organizations in Geneva and has the honour to refer to the Note Verbale from your Excellency's Government of 12 February 2011, and letter from the Special Rapporteur on extrajudicial, summary or arbitrary executions of 18 February 2011, with regard to the investigation to establish the authenticity of the video footage which allegedly documents members of the Sri Lankan Army committing extrajudicial executions.

The Office of the High Commissioner for Human Rights would like to inform your Excellency's Government that the Special Rapporteur on extrajudicial, summary or arbitrary executions has commissioned, Mr. Grant Fredericks, a forensic video analyst to work with him.

Communication from the Special Rapporteur dated 26 April 2011

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 8/3.

I would like to inform your Excellency's Government that as indicated in my communication of 15 December 2010, I have concluded the technical assessment to establish the authenticity of the video footage which allegedly documents members of the Sri Lankan Army committing extrajudicial executions.

I have attached to this communication the following annexures (a) A technical note in relation to the authenticity of the second extended "Channel 4" video footage regarding Sri Lanka (b) Report of Mr. Daniel Spitz, a forensic pathologist; (c) Report of Mr. Jeff Spivack, a forensic video analyst; (d) Report of Mr. Peter Diaczuk, a firearms expert; and (e) Report of Mr. Grant Fredericks, a forensic video analyst.

I would like to bring to the attention of your Excellency's Government that the overall conclusion reached by the experts is that the video is authentic and the events reflected in the video footage occurred as depicted. The view in the video footage is neither doctored nor staged; it shows real people being summarily executed.

On this basis my conclusion is that the video footage indicates the commission of serious crimes, which should together with any other available evidence be examined systematically and professionally by domestic investigators appointed by the Sri Lankan Government, as well as by an independent, international investigational body, with a clear mandate to establish who should be held accountable for the killings.

I would like to stress, as indicated in my communication of 18 February 2011, that the argument advanced by your Excellency's Government in previous correspondence that the entity or person who alleges a violation should authenticate it before an investigation is undertaken cannot be sustained under international law. In view of the evidence available, some of which can be used to ascertain the identity of the perpetrators, the onus is on your Excellency's Government to seek to clarify the violations alleged. This obligation is clearly provided under principles 9 and 10 of the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted on 24 May 1989, which provides under Principle 9 that "There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate

autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.”

Principle 10 provides that “The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.”

I am aware that your Excellency’s Government has established the Lessons Learnt Reconciliation Commission. However, in addition to measures that have been adopted at the domestic level, I recommend that your Excellency’s Government should establish an independent international investigative entity with full investigative powers and capabilities. The entity should make recommendations for possible prosecutions and other measures as well as have appropriate witness protection mechanisms. The investigation must accord with the guarantees established under international law and practice to ensure its independence and impartiality.

I must emphasize that the international obligations undertaken by your Excellency’s Government will not be discharged until credible measures are adopted to investigate and prosecute those responsible, including in the chain of command.

I would appreciate receiving information from your Excellency’s Government on measures that will be adopted to ensure accountability for the human rights violations that occurred during the war in Sri Lanka.

On 7 February 2011, the Office of the High Commissioner for Human Rights transmitted, on my behalf, a Universal Serial Bus containing the contents of the video footage which was the subject of my investigation. I would appreciate it if your Excellency’s Government could inform me of the investigations, if any, it has undertaken with regard to the video footage.

I would like to inform your Excellency’s Government that I will present the findings and conclusions of my technical assessment to the Human Rights Council at its 17th Session. I therefore request that your Excellency’s Government provides me with a response by 6 May 2011.

I will continue to monitor developments related to this case and I remain at your Excellency’s Government’s disposal with regard to any related questions or requests that your Excellency’s Government would wish to seek.

Government reply dated 29 April 2011

This has reference to your communication No. UA G/SO 214 (33-27) LKA 3/2011 dated 26 April 2011, addressed to H.E Mrs. Kshenuka Senewiratnem Ambassador Permanent Representative of the Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office in Geneva with regard to the authenticity of the video footage, stating that the following documents were being forwarded

Technical note by the Special Rapporteur on summary, extrajudicial or arbitrary executions in relation to the authenticity of the second, extended Channel 4 video tape regarding Sri Lanka.

Report of Mr. Daniel Spitz, a forensic pathologist.

Report of Mr. Jeff Spivack, a forensic video analyst.

Report of Mr. Peter Diaczuk, a firearms expert.

Report of Mr. Grant Fredericks, a forensic video analyst.

However I wish to bring to your kind attention that the annex C, said to have been attached to the communication under reference i.e. "Report of Mr. Jeff Spivack, a forensic video analyst" was neither attached to the faxed communication received at this Mission at 1735 hrs on 26th April 2011 nor the emailed communication sent at 1931 hours on 26th April 2011.

The communication under reference requests the Mission to forward its comments on your communication and its annexes by 6 May 2011.

It would be appreciated if the "Report of Mr. Jeff Spivack, a forensic video analyst" could be forwarded to this Mission at the earliest.

In view of the fact that the communication received by this mission did not contain the said annex C, you would no doubt agree, that the Government of Sri Lanka should be duly accorded more time to forward its observations on your communications and its annexes.

Note Verbale dated 2 May 2011

The Office of the High Commissioner for Human Rights presents its compliments to the Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office and other international organizations in Geneva and has the honour to inform your Excellency's Government that the Special Rapporteur Mr. Christof Heyns would appreciate to receive a response to his communication of 26 April 2011, by 11 May 2011.

Government reply dated 3 May 2011

This has reference to the Note Verbale from the Office of the High Commissioner for Human Rights dated 2 May 2011, informing that you would appreciate to receive a response from the Government Sri Lanka to your communication of 26 April 2011, by 11 May 2011.

While appreciating the OHCHR for forwarding Annex C, report of Mr. Jeff Spivack, a forensic video analyst, I wish to inform that the authorities in Colombo conveyed that the images as contained therein are not clearly visible and appear as dark blotches, as the copy forward to the Mission is a scanned PDF copy of a faxed document. It would be appreciated if your office could make available a copy of the said annex containing clear at the earliest.

You would no doubt agree that in this context it would impinge on the timeline given to the Government of Sri Lanka for the examination of its content.

Note Verbale dated 5 May 2011

The Office of the High Commissioner for Human Rights presents its compliments to the Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office and other international organizations in Geneva and has the honour to transmit on behalf of the Special Rapporteur on summary, extrajudicial or arbitrary executions, Mr. Christof Heyns the enclosed Compact Disk containing the following (a) A technical note in

relation to the authenticity of the second extended “Channel 4” video footage regarding Sri Lanka (b) Report of Mr. Daniel Spitz, a forensic pathologist; (c) Report of Mr. Jeff Spivack, a forensic video analyst; (d) Report of Mr. Peter Diaczuk, a firearms expert; and (e) Report of Mr. Grant Fredericks, a forensic video analyst. The enclosed documents were transmitted to your Excellency’s Government in communications of 26 April 2011 and 29 April 2011, by fax and email.

Government reply dated 10 May 2011

This has reference to my letter of 3 May and also the telephone message left with your office yesterday.

The Mission is yet to receive the soft copy of Annex C which contains the report of Mr. Jeff Spivack, as requested without which the Government of Sri Lanka is unable to meet the deadline of 11 May 2011, and therefore would need to be given an extension.

It would be appreciated if the soft copy of the images contained in Annex C is transmitted electronically at the earliest.

Government reply dated 11 May 2011

The Permanent Mission of the Democratic Republic of Sri Lanka to the United Nations Office and other International Organisation in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the latter’s communication UA G/SO 214 (33-27) LKA 3/2011 of the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 26 April 2011 has the honour to forward the interim observations of the Government of Sri Lanka in this regard.

The Permanent Mission wishes to highlight that the soft copies of the documents transmitted by the OHCHR originally requested by our letter of 3 May 2011 and subsequently of 10 May 2011 were received at this office today, after having received the annexed observations from Colombo, and therefore the contents of which have not been able to be considered in the Governments interim observations.

Government reply dated 11 May 2011

The Permanent Mission of the Democratic Republic of Sri Lanka to the United Nations Office and other International Organisation in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (Special Procedures Branch) and has the honour to refer to paragraphs 34 and 35 of the communication dated 26 April of Mr. Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions and to the telephone conversations with Mr. Orest Nowosad, Chief, Civil and Political Rights Section.

The Permanent Mission of Sri Lanka would appreciate receiving the additional material mentioned in the paragraphs under reference of the said communication as early as possible.

The Permanent Mission would also appreciate, if the deadline to forward observations could be extended, enabling the Government of Sri Lanka to include its observations on the document just received in a CD, since the mission would require time to transmit the CD to concerned authorities in Colombo and for them to prepare observations.

The Permanent Mission of the Democratic Republic of Sri Lanka avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights (Special Procedures Branch) the assurances of its highest consideration.

Government reply dated 11 May 2011

Response of the Government of Sri Lanka to the Technical Note by the Special Rapporteur on extrajudicial, summary or arbitrary executions Mr. Christof Heyns, in relation to the authenticity of the second extended Channel 4 video tape regarding Sri Lanka.

Whilst welcoming the Special Rapporteur's efforts to provide the GoSL, an opportunity to respond to his Technical Note and annexures, the procedure adopted failed to achieve its objective for the following reasons;

The incomplete nature of the Note- the reports annexed contained blurred and illegible images which were not of a quality that could be examined and therefore precluded the Government from making an objective assessment. The apparent lack of professional diligence in ensuring that legible copies were made available in a timely manner is suggestive of a want of good faith.

The original copies of the Special Rapporteurs technical note of 26 April 2011 and annexures reached the permanent mission of Sri Lanka in Geneva on the same day. At this juncture a short deadline of 06 May was stipulated for the Government of Sri Lanka to respond. However the annexures provided with the initial Note from the Special Rapporteur were faxed versions of original document. The illustrations in these documents were not legible and defied view. Thereupon a request was made from the Special Rapporteur to provide documents in their original electronic form. These versions of the documents were received on 29 April 2011. However, neither communications of 26 nor 29th April contained the report of the expert Mr. Spivack despite the Special Rapporteur's Note stating that it is attached. This omission was noted in Colombo and an immediate request was made for Mr. Spivacks report. His report was received by the Sri Lankan Mission on 30 April. This too was a scanned image of a faxed document. Further to a request from the Government an extension of the deadline until 11 May was agreed upon. The illustrations in the Spivack report are also illegible as the document is not an original. This means that the images on which many assertions were based would not be reviewed in time and a full analysis of the Technical Note along with its annexures has not been possible to date. Once such analysis is complete, the outcome will be shared with the Special Rapporteur.

A categorical assertion has been made by the Special Rapporteur that the "material also includes pictures of the dead body of Charles Anthony (son of the late LTTE leader Prabhakaran)" (in paragraph 34 of the Note). The video provided by the Special Rapporteur does not to the naked eye display a body that can be identified as that of Charles Anthony when the video is compared with the photographs of the deceased terrorist Charles Anthony. There appears to be an absence of a satisfactory material to support the Special Rapporteur's contention. It also gives rise to the question whether the Special Rapporteur has withheld relevant material, which ought to have been released to the Government at the earliest opportunity, in a spirit of constructive engagement and transparency. No less could be expected when engaging with a sovereign state. It is the Government's view that in an inquiry of this nature, complete disclosure of the material is an indispensable requirement. The Government has initiated steps to obtain the other materials adverted to by the Special Rapporteur which he offers to make available upon request (vide. Paragraph 35 of the Note).

Sri Lanka notes that the experts report submitted by Mr Grant Fredericks appears to have arrived at firm conclusions that both videos i.e. the video (2009) and extended video (2010) are authentic. He was initially requested by The Times of London Newspaper to evaluate the video (2009) around December 2009 and his conclusion was referred to by the previous

Special Rapporteur Mr. Philip Alston in his report of January 2010 although Mr Alston had not seen the full report. Despite not seeing the reports he cited Mr. Fredericks with approval since there was no apparent unanimity between Mr. Fredericks and the experts commissioned by Mr. Alston. Mr. Fredericks, on or around 15 December 2009, made public assertion in print and electronic media that the video of 2009 was authentic. It is inconceivable that he should alter his perception of the genuineness of the extended video which also includes the 2009 video given the position taken by him publicly.

Sri Lanka also notes that the self-same experts are relied upon by the successor to Mr. Alston including Mr. Fredericks, in evaluating the extended video (2010). This hardly amounts to an independent evaluation of the extended video but appears to be a general reaffirmation of the conclusions of 2009 with the addition of some explanations aimed at dispelling the legitimate doubts and questions raised by the Sri Lankan experts in their analysis of the shorter video in 2009.

It is surprising that the Special Rapporteur should continue to rely on the same four experts who had already committed themselves by asserting that the video was genuine. It is remarkable that the Special Rapporteur, with all the resources available to his office, could not identify any other experts of equal or greater standing or repute who could objectively comment on the extended video. If the governing interest of the Special Rapporteur is to undertake a truly impartial analysis, it would appear more feasible to commission experts other than the four who had already pronounced on the video of 2009. Suspicion of bias may well arise given the determination of the Special Rapporteur to re-commission the experts who had arrived at the most definite conclusions on the video (2009).

Despite the foregoing, it is note worthy that one expert –Mr. Spivack- appears to have substantially altered some of his observations. Moreover the statement that the experts worked “independently of one another” in analysing the video of 2009 is also questionable. The Government of Sri Lanka has discovered that Mr Spivack in a technical representative for a brand of specialised proprietary software which was used to enhance the video (2009) and which was shared with two other experts. Hence the assertion of independence may be impugned on the basis of the prior collaboration between the experts. The recipient experts-responsible for ballistics and forensic pathology – both based their conclusion on the conclusions on the enhanced video provided by Mr. Spivack. Furthermore he does not at any point acknowledge the usage of the specialised software which has had a profound impact on the analysis.

It is axiomatic that an expert should provide objective and unbiased opinions on matters within his expertise and should not assume the role of an advocate. This duty overrides any obligation to the person from whom he received instructions or by whom he is paid. This duty certainly includes an obligation to inform all parties of the expert’s opinion changes and this is hardly noticeable in the reports.

A preliminary study of the available legible material has been carried out and the following observations are made:

Initially, the experts concluded that the video (2009) was an unedited original video recording on a Phillips brand mobile telephone available in Sri Lanka. This level of certainty does not appear justified as another expert concluded that the extended video (2010) was edited using Philips software but using a Nokia model 6600 series mobile telephone for recording. The first expert then changed his conclusion so as to be consistent with the later conclusion by Fredericks. However there does not appear to be any basis for the change other than the opinion of the second expert which taints Spivack’s opinion.

The expert –Fredericks-has generally identified the devise used for recording the extended video to be a Nokia 6600 series model. He also states that “it is clear that that the camera used to record this segment (images 765 and 766) has an ability to jump to a 2X [200%]

zoom. The zoom appears to be an optical zoom, since digital zoom artifacts are not present". Having checked the standard specifications relating to this series of mobile telephone, it is apparent that the mentioned series do not have optical zoom capability.

In the extended video from frame nos. 3 to 8 the person identified as victim #3 makes a body movement for which there is no apparent reason. From frame nos. 17 to 30 when a gun is aimed and allegedly fired at victim #2, victim #3 who is away from the line of fire and is lying on the ground raises and lowers his head. The failure of the experts-Fredericks- to note this feature raised concern as to whether he has reviewed all visual evidence including that which does not support his conclusions. This selective analysis leaves room for questioning the degree of diligence exercised by the expert.

The expert Spivack states that CMOS technology based imaging sensors are commonly found in mobile phone cameras while standard definition video camcorders typically use CCD imaging sensors. There are many digital video camcorders from almost every reputed manufacturer that utilise CMOS technology based imaging sensors.

The Special Rapporteur has asserted in paragraph 36 of his Note that neither the Attorney-General nor the independent Lessons Learnt and Reconciliation Commission have given serious consideration to the video. The Commission referred to by the Special Rapporteur has, in fact, taken cognisance of the matter and has called for the assistance of an expert from the premier technological University in Sri Lanka on the basis that it has examined the video and possesses the technical means to ascertain the authenticity of the video. The Commission had requested the university to provide expertise on 12 April 2011 and is a further reflection of the unprofessional and hasty conclusions arrived at in the Note. The Commission is in the process of receiving the expert evidence and it is expected that it will evaluate the same in its eventual findings. The concerns of the Special Rapporteur in this connection have been addressed. As far back as September 2009, it is a matter of record that the Attorney-General has given this matter his serious consideration. For instance, on an initial broadcasting of the video by Channel 4 in August 2009 immediate steps were taken in September, by the Attorney General to complain to OFFCOM (U.K.) and demand an inquiry into the conduct of channel 4 which declined to provide an original copy of the video to the Government of Sri Lanka for purposes of investigation. Therefore to suggest that the Attorney General did not give this matter serious consideration is misplaced and strongly suggestive of an intention to convey an attitude of inaction on the part of the Government.

It has to be highlighted that the legal efficacy of any report or publication is hinged upon the fundamental requirement of impartiality and a complete lack of bias, having regard to the rules of natural justice.

It is respectfully submitted that the process adopted in regard to the publication of the videos and subsequent steps taken fall far short of this requirement and is tainted with the fundamental vice of bias and partiality. The fact that the contests of the video were not made available to the Sri Lankan Government by channel 4 lends support to the suspicion that the broadcast of the videos was for a collateral purpose.

The Government of Sri Lanka is ready to constructively engage with the Special Rapporteur in the future on the basis of transparency and fair process being adopted. Progress achieved through domestic procedures and mechanisms will be communicated to the Special Rapporteur upon completion of internal processes.
